

CAPANA SWISS ADVISORS AG vs RYMARK  
SHAEN BERNHARDT - 01/24/2025

30(b)(6)  
Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF UTAH  
3 -o0o-  
4 CAPANA SWISS ADVISORS AG, a )  
Swiss corporation; AMERIMARK )  
5 AUTOMOTIVE AG, a Swiss )  
corporation, )  
6 )  
Plaintiffs, )  
7 v. ) Case No.: 2:23-cv-00467  
Judge Ted Stewart  
8 )  
RYMARK, INC., a Utah )  
9 corporation; NICHOLAS THAYNE )  
MARKOSIAN, an individual; )  
10 JOHN KIRKLAND, an )  
individual; and VICKY SMALL, )  
11 an individual, )  
RULE 30(b)(6) DEPOSITION  
12 Defendants. ) AMERIMARK AUTOMOTIVE AG  
BY: SHAEN BERNHARDT  
13 )  
RYMARK, INC., a Utah )  
14 corporation; and NICHOLAS )  
THAYNE MARKOSIAN, an )  
15 individual, )  
16 Counter Claimants, )  
17 v. )  
18 CAPANA SWISS ADVISORS AG, a )  
Swiss corporation, and )  
19 Amerimark Automotive AG, a )  
Swiss corporation, )  
20 )  
Counter Defendants. )  
21 )  
22  
23  
24  
25

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CAPANA SWISS ADVISORS AG vs RYMARK  
SHAEN BERNHARDT - 01/24/2025

30(b)(6)  
Page 2

1 RYMARK, INC., a Utah )  
corporation; and NICHOLAS )  
2 THAYNE MARKOSIAN, an )  
individual, )  
3 )  
Third-Party Plaintiffs, )  
4 )  
v. )  
5 )  
SHAEN BERNHARDT, an )  
6 individual; ASHLEY MIRON )  
LESTEM, an individual; DAVID )  
7 HESTERMAN, an individual; )  
NICOLAI COLSHORN, an )  
8 individual; STEFAN )  
KAMMERLANDER, an individual; )  
9 ALEXANDER COENEN, an )  
individual; MARTIN FASSER )  
10 HEEG, an individual; )  
AMERIMARK GROUP AG, a Swiss )  
11 corporation; and PHILOMAXCAP )  
AG, a German corporation, )  
12 )  
Third-Party Defendants. )  
13 \_\_\_\_\_ )  
14 )

15 RULE 30(b)(6) DEPOSITION OF AMERIMARK AUTOMOTIVE AG

16 BY: SHAEN BERNHARDT

17

18 Taken on Friday, January 24, 2025

19 At 9:00 a.m. MT

20

21 At Kunzler Bean & Adamson, PC

22 50 West Broadway

23 Suite 1000

24 Salt Lake City, Utah 84101

25 Reported by: Brooke Simms, RPR, CCR, CSR

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1 I N D E X

2 SHAEN BERNHARDT PAGE

3 Examination By Mr. Richards 7

4

5 \* \* \*

6

E X H I B I T S

7

8 EXHIBIT DESCRIPTION PAGE

9 Exhibit D 4 - Email Chain 11/14/2017 187

10 Exhibit D 108 - Rymark's Amended Notice of Rule 30(b)(6) 1/9/2025 8

11 Exhibit D 109 - Email Chain 1/18/2019 [PL 0000014568-14570] 39

12 Exhibit D 110 - Email Chain 1/24/2019 [PL 0000004560-4561] 43

13 Exhibit D 111 - Email 2/5/2019 49

14 Exhibit D 112 - Email Chain 2/11/2019 54

15 Exhibit D 113 - Email Chain 8/31/2020 [PL 0000014944-15045] 56

16 Exhibit D 114 - Email Chain 4/26/2019 [PL 0000000622-623] 87

17 Exhibit D 115 - Email Chain 6/24/2019 [PL 0000004632-4654] 101

18 Exhibit D 116 - Declaration of Sarah E. Diamond in Support 1/02/2025 119

19 Exhibit D 117 - Email Chain 5/9/2023 [PL 0000019398-19400] 140

20 Exhibit D 118 - Email Chain 9/26/2019 [PL 0000002188-2189] 147

21

22

1	E X H I B I T S (Continued)		
2	EXHIBIT	DESCRIPTION	PAGE
3	Exhibit D 119	- Email Chain 1/17/2019 [PL 0000014714-14716]	164
4	Exhibit D 120	- Email 11/22/2019 [PL	165
5		0000011399]	
6	Exhibit D 121	- Complaint	174
7	Exhibit D 122	- Verified Complaint 7/18/2023	174
8	Exhibit D 123	- Email Chain 10/18/2019 [PL 0000012225-12227]	206
9	Exhibit D 124	- Email 10/31/2019 [PL	215
10		0000012400-12404]	
11	Exhibit D 125	- Euronext Letter 4/16/2019	219
12	Exhibit D 126	- Email Chain 11/4/2019 [PL 0000003151-3156]	227
13	Exhibit D 127	- Email 5/16/2019 [PL	236
14		0000000599]	
15	Exhibit D 128	- Registration of Shares for Negotiations on Vienna Stock	241
16		Exchange Direct MTF 6/2019 [PL 0000003160-3187]	
17	Exhibit D 129	- Email Chain 11/5/2019 [PL	254
18		0000007454-7455]	
19	Exhibit D 130	- Email 11/22/2019 [PL 0000014036-14038]	259
20	Exhibit D 131	- Email Chain 2/1/2021 [PL	267
21		0000005396-5397]	
22	Exhibit D 132	- Email Chain 10/31/18 [WHITETREE 000029-31]	269
23	Exhibit D 133	- Email Chain 11/5/2018	279
24		[WHITETREE 000032-34]	
25			

1	E X H I B I T S (Continued)		
2	EXHIBIT	DESCRIPTION	PAGE
3	Exhibit D 134	- Binding Term Sheet 11/8/2018 [WHITETREE 0000035-38]	281
4	Exhibit D 135	- Email Chain 1/9/2019 [WHITETREE 000039]	293
5			
6	Exhibit D 136	- 4Service Cloud Tech AG Balance Sheet 12/31/2017 [PL 0000003124-3125]	297
7			
8			
9			
10			
11			
12			
13			
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15			
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1 P R O C E E D I N G S

2

3 Shaen Bernhardt,  
4 was called as a witness, and having been first duly  
5 sworn to tell the truth, testified as follows:

6

7 EXAMINATION

8 BY MR. RICHARDS:

9 Q. Good morning, Mr. Bernhardt.

10 A. Good morning.

11 Q. You know that I'm Stephen Richards. I  
12 represent the defendants in this case, yes?

13 A. I do know those things.

14 Q. And you're testifying today as a corporate  
15 designee of AmeriMark Automotive AG; is that right?

16 A. That's correct.

17 Q. And if I call that company AmeriMark  
18 Automotive, you'll understand what I mean?

19 A. I will.

20 Q. Capana Swiss Advisors AG is also a plaintiff.  
21 If I call them Capana, you'll understand what I mean?

22 A. I will.

23 Q. And AmeriMark Group AG is also relevant to  
24 this litigation, and if I call that entity AmeriMark  
25 Group, you will understand what I mean, yes?

1 A. I will.

2 Q. Thank you. I know you know the ground rules.  
3 I'll go over them briefly anyway. You and I both have a  
4 tendency --

5 A. Mr. Richards, sorry. If you'd like, we can  
6 stipulate to skip the ground rules, if you're allowed.

7 Q. I'll just make one, which is that you and I  
8 both have a tendency to tax our court reporters. So if  
9 we could slow down and not speak over each other, Brooke  
10 will be a bigger fan of us at the end of the day.  
11 Otherwise, I'm happy to stipulate that you understand  
12 the instructions I've given you previously. Fair?

13 A. I do. And I'll try to slow down. It's going  
14 to be an effort. I'm a fast talker -- I was saying to  
15 the court reporter. Sorry.

16 (Exhibit D 108 was marked.)

17 Q. (BY MR. RICHARDS) Mr. Bernhardt, I've marked  
18 as Exhibit D 108 a document titled "Rymark's Amended  
19 Notice of Rule 30(b)(6) Deposition to AmeriMark  
20 Automotive AG." Do you see that?

21 A. I do.

22 Q. Have you seen this document before?

23 A. I have.

24 Q. Do you have a general recollection of the  
25 first time you saw this document?



1           A.     As I testified yesterday, because I think both  
2     of these Rule 30(b)6 deposition notices have been  
3     through a couple iterations and my recollection is that  
4     the first time I saw the earliest iteration would have  
5     been December 3rd. I think you had a different opinion.  
6     I'd be curious to know if I was wrong about that.

7           **Q.     I didn't check actually.**

8           A.     That's fine. I think it was December 3rd. I  
9     haven't gone back and checked since my testimony  
10    yesterday. I believe that's accurate.

11          **Q.     And on pages 5 and 6 of this deposition**  
12    **notice, there's a list of designated topics. Do you see**  
13    **that?**

14          A.     I do.

15          **Q.     And your attorneys objected to some of the**  
16    **topics. Setting aside the topics they objected to, are**  
17    **you prepared to testify on the other topics today?**

18          A.     I am.

19               MR. WORDEN: Let me just jump in and say, as  
20    was the case yesterday, he is here to answer whatever  
21    questions you have, other than specific questions I may  
22    object to and instruct him not to answer. We served the  
23    objection. Many of them are extremely overbroad -- the  
24    factual basis for all allegations made in your complaint  
25    and answers thereto, et cetera. Nonetheless, as was the

1 case yesterday, we did not prohibit you from asking him  
2 hardly any questions except where invading the  
3 attorney-client privilege. That is still true today.  
4 You will have had him for three days, 21 hours. He's  
5 not coming back. So I encourage you to ask whatever you  
6 want to ask today.

7 MR. RICHARDS: And I'll just state for the  
8 record that there's a motion pending before the court to  
9 strike the untimely objections, and we intend to see  
10 that motion resolved.

11 MR. WORDEN: Why not just ask him today?  
12 What's the -- what's the prohibition --

13 MR. PEHRSON: Mr. Worden, did you attend the  
14 meet and confer session last Friday with your  
15 co-counsel? Have you read -- have you read the local  
16 rules of this district?

17 MR. WORDEN: I have read the local rules.  
18 I've also been on a few depositions, including  
19 yesterday, where there are lots of categories and  
20 objections are made. Nonetheless, this is the first  
21 time I have ever seen someone go to the court and say  
22 we're going to fly someone from Switzerland and not ask  
23 them anything in this area because we want to tell the  
24 court we need an extension to discovery so the court  
25 will not set a trial date to drag this out. He's here.

1 If you have questions, ask him. If not, that's going to  
2 be it.

3 MR. PEHRSON: We disagree, Mr. Worden.

4 MR. WORDEN: Very well.

5 THE WITNESS: Just for the record, I spent  
6 35 hours in continuous travel to get here. It will be a  
7 similar trip back, and I did that twice before -- once  
8 for my mediation with the defendants and once for my  
9 prior deposition. So I'm certainly willing to answer  
10 any questions. Looking forward to having the  
11 opportunity to participate in the dispute resolution  
12 process.

13 MR. WORDEN: Thank you.

14 Q. (BY MR. RICHARDS) Mr. Bernhardt, I believe  
15 you testified yesterday you spent approximately  
16 250 hours preparing for the combination of yesterday's  
17 deposition and today's; is that correct?

18 A. I think it was 250 to maybe north of 250.  
19 That is correct.

20 Q. And I think you testified that those hours  
21 were split roughly equally between the two depositions.  
22 Fair?

23 A. Fair to whom?

24 Q. Is that fair to you -- is that fair to -- is  
25 my characterization of your testimony fair to you?

1 A. You're asking me if it's accurate?

2 Q. Sure.

3 A. I think I also included the detail that I  
4 spent a little more time for preparing for my role as a  
5 designee -- 30(b)(6) designee for Capana Swiss Advisors  
6 than I did for my role today as a 30(b)(6) designee for  
7 AmeriMark Automotive. I think I also added the detail  
8 that that was since approximately December 3rd.

9 Q. Whom did you speak with in preparation for  
10 this deposition, setting aside your counsel, regarding  
11 AmeriMark Automotive?

12 A. I had discussions with -- I combined this with  
13 both. For the preparations for the depositions, I had  
14 discussions, as I testified yesterday, with current and  
15 former directors. I also spoke with a number of other  
16 parties. I can refer you also to the list that I gave  
17 you yesterday. We talked to some of the outside  
18 consultants for the companies. I spent time with books  
19 and records of the company. I spoke just to designate  
20 counsel, both the counsel in U.S. and counsel in  
21 Switzerland.

22 I made attempts to reach Nicolai Colshorn,  
23 former director of AmeriMark Automotive, and was  
24 rebuffed by his attorney. I tried to talk to Nicole  
25 Kuster, and she is represented by counsel as well. I

1 attempted to talk to former directors, including  
2 Mr. Staeger and Mr. Spillmann. I did not speak to  
3 Mr. Spillmann, but Mr. Kammerlander, who spoke with  
4 Mr. Spillmann. I spoke with Martin Fasser Heeg, and I  
5 spoke with Mr. Kammerlander.

6 At the moment that's the best of my  
7 recollection. I may have done a more complete list  
8 yesterday during my deposition, but that's materially  
9 the list that I spoke to.

10 **Q. You mentioned current and former directors.**  
11 **Setting aside Mr. Heeg, did you speak with any current**  
12 **or former directors of AmeriMark Automotive?**

13 A. Of Automotive, no. The only former director  
14 at AmeriMark Automotive would have been Mr. Colshorn,  
15 and he was not -- his attorney refused to make him  
16 available to me.

17 **Q. Did you review any documents relating to**  
18 **AmeriMark Automotive in preparation for today's**  
19 **deposition?**

20 A. It would be impossible to list the number of  
21 documents that I reviewed. Hundreds upon hundreds of  
22 documents. I went through as much of the case file as I  
23 could squeeze in during that period.

24 I also, as you know from my testimony  
25 yesterday, reviewed a number of physical documents which

1 we produced yesterday, including documents that had been  
2 received from Daniel Gysi, the attorney of AmeriMark  
3 Automotive who did the formation. That particular set  
4 of documents, as I testified yesterday, was the complete  
5 corporate -- excuse me -- commercial registry file of  
6 the company, cataloging it from its birth until at least  
7 it was converted into AmeriMark Group. Those documents,  
8 I'll remind you, were all certified, notarized, and had  
9 an apostille affixed to them by the commercial registry  
10 and were delivered directly to me by attorney Daniel  
11 Gysi. I brought them with me on the flight so that I  
12 could present them to you physically. So there were  
13 those documents.

14 In addition to those documents, there were  
15 some original documents in the AmeriMark Automotive file  
16 pertaining to the conversion of AmeriMark Automotive to  
17 AmeriMark Group, specifically 39 documents, including 19  
18 powers of attorney and 19 subscription agreements.  
19 These were original documents on U.S. letter paper.  
20 Those documents were already produced in digital form.  
21 As you recall from my testimony yesterday, I established  
22 the provenance of those documents by looking through the  
23 case file. They were prepared on Rymark -- in Rymark  
24 offices, put on Rymark scanners, and sent from the  
25 beenjerkedaround.com email domain on to Europe. The

1 originals were sent, I believe, by FedEx of those 2018  
2 documents. They were received by Mr. Kammerlander in  
3 his capacity, before he was a director, in his capacity  
4 of certifying the capital increase which created  
5 AmeriMark Group.

6 In addition to that, I also provided two  
7 physical documents -- the application for paying  
8 services -- agent services to BankM signed by  
9 Mr. Markosian. That document was dated, I believe, back  
10 on June of 2016. On that, again, was an original. One  
11 of the application documents was on U.S. letter paper  
12 signed in wet ink by Mr. Markosian. That document was  
13 FedExed to BankM and countersigned by BankM.

14 There was a second application for general  
15 banking services, which is also original, also signed by  
16 Mr. Markosian in wet ink, which is also dated -- I  
17 believe it was June -- I think it was June 26th, but  
18 certainly in June 2016. Delivered that document.

19 (Reporter clarification.)

20 A. I thought it was June 26th, but I think it was  
21 certainly in June 2016.

22 I'm trying to think what other documents --  
23 physical documents that I reviewed. I certainly gave a  
24 fairly comprehensive list, I think, yesterday.

25 In addition to that, going through the case

1 file, some of the specific documentation that I can  
2 recall reviewing, particularly with the intention to  
3 AmeriMark Automotive, would include anything regarding  
4 AmeriMark Automotive's various transactions that might  
5 not be in the file -- in other words, draft documents  
6 that had been in production that were not used that did  
7 not come their way in. I spent a particular amount of  
8 time, of course, reviewing drafts of the many --

9 (Mr. Moss enters the room.)

10 MR. RICHARDS: This is Mr. Moss. He's counsel  
11 for Mr. Markosian.

12 THE WITNESS: Mr. Moss. Western California?

13 MR. MOSS: I'm sorry. What?

14 THE WITNESS: Western California?

15 MR. MOSS: No. Utah.

16 THE WITNESS: Utah law. Thank you.

17 Q. (BY MR. RICHARDS) So I think I have the gist  
18 of it. Thank you.

19 A. I -- okay.

20 Q. I think your testimony yesterday was that no  
21 one can identify all transactions and shares of  
22 AmeriMark Group; is that correct?

23 A. Well, I think there might be some supernatural  
24 power that might be able to do that, but you have to  
25 remember, AmeriMark Group for a period of time had



1 bearer shares. AmeriMark Group for a period time had  
2 registered shares. Shares were traded on the  
3 multilateral trading facility of the Vienna Stock  
4 Exchange direct market. This is the lowest segment.  
5 Those transactions might be sitting somewhere in one of  
6 the central security supposit- -- I said suppositories.  
7 I'm so sorry. Of course I meant depositories.

8           You know, it's just not possible to  
9 reconstruct that, at least in any way that I know how to  
10 do. The bearer shares are particularly onersome -- you  
11 know, onerous -- because those could have been  
12 transferred back and forth between parties and were, in  
13 fact, transacted back and forth between parties without  
14 record.

15           In addition to that, there are several private  
16 transactions between parties between AmerMark Automotive  
17 and AmeriMark Group, for instance, that could have  
18 happened, which we can't possibly document. I'll give  
19 you an example, because I think it's really important to  
20 understand the mechanics of this for anybody who's  
21 reading this transcript later.

22           Mr. Markosian acquired 18 million shares of  
23 AmeriMark Automotive on June 6th, 2016, by virtue of  
24 contributing his company, Rymark, Inc. into that --

25           **Q. I'm going to interrupt you, Mr. Bernhardt.**

1 A. I need to --

2 Q. No. You don't need to explain. You need to  
3 answer my question. My question was, was it your  
4 testimony yesterday that no one could identify all  
5 transactions in AmeriMark Group? I would like to be  
6 efficient today. I really would. You've come a long  
7 way. Your time is valuable. So is Mr. Worden's. I  
8 expect succinct and direct answers to my questions.

9 MR. WORDEN: Okay. All right. That's enough  
10 of that. Are you done with your answer?

11 THE WITNESS: I wasn't.

12 A. What's very important to understand, because  
13 there's this intonation that somehow there's an  
14 obligation that some singular party, including the  
15 company itself, is responsible for tracking all  
16 transactions. And what I need to explain to clarify my  
17 testimony yesterday and to make sure that the record is  
18 absolutely clear -- that's just not the case. And I'd  
19 like to give an example that the defense should know all  
20 about. I want to highlight that to make sure it's on  
21 the record so that anyone not reading the transcript  
22 from yesterday sees it today.

23 Specifically, Mr. Markosian had 18 million  
24 shares from AmeriMark Automotive. You can see that also  
25 in the physical documents I delivered yesterday, the

1 official corporate file, the corporate bible, straight  
2 from the commercial registry certified and apostilled.  
3 You can see that. It's very clear. There's no doubt  
4 about that. Mr. Markosian then, in some fashion or  
5 another, transferred about 500,000 of these 18 million  
6 of his shares, offered his Swiss securities to several  
7 U.S. persons, 18 U.S. persons to be particular. That  
8 list is completely codified also in the commercial  
9 registry file because it's published in what's called a  
10 public D. This is the highest authority in Switzerland  
11 of sort of legal representation. It would be the  
12 equivalent of Mr. Markosian -- when he acquired from  
13 Mr. Ryan his interest in the Rymark, filing that with  
14 the secretary of state. So that's an interesting  
15 transaction.

16 Mr. Markosian has offered his securities to  
17 U.S. persons, and those U.S. persons then are listed  
18 between June 6th, 2016, and June 17th, 2016. Then  
19 Mr. Markosian signs a share ledger. It's the first  
20 share ledger of AmeriMark Automotive AG. That share  
21 ledger lists the famous 19 initial shareholders,  
22 including himself.

23 I have asked and the plaintiffs have asked for  
24 documentation on these transfers on these sales.  
25 Clearly they haven't. Mr. Markosian I don't believe was

1     lying when he took his 18 million shares and then later  
2     signed a share ledger in his capacity as the president  
3     of AmeriMark Automotive, the senior executive of that  
4     company at that time, member of the board of directors,  
5     therefore responsible for dealing with the official  
6     share ledger. Somehow those transactions happened.

7             The plaintiffs have asked for that  
8     documentation. Three possibilities exist. The  
9     documentation was created and is being withheld by the  
10    defense. The documentation was created and has been  
11    destroyed, which would be unfortunate. Or the  
12    documentation was never created.

13            But as you can see, it's impossible to have  
14    documentation of those transactions. This is a perfect  
15    example in a Swiss company of -- of -- and we're not  
16    even dealing yet with dematerialized shares, bearer  
17    shares, or anything like that. Already, in the very  
18    infancy of the company, we already have -- very  
19    difficult to determine exactly what those transactions  
20    were.

21            So, Counselor, my answer to you is, no, there  
22    is no person who can identify all the transactions in  
23    the Swiss company like that, even in the case of a Swiss  
24    company that's only been alive for a few months, as in  
25    the case of AmeriMark Automotive. I hope I've clarified

1 that.

2 MR. RICHARDS: I'm going to move to strike  
3 that entire answer except for the last sentence. I'm  
4 also going to move to strike Mr. Worden's comments about  
5 halfway through. I'm entitled to a deposition today.  
6 I'm not entitled to a filibuster. I expect answers, and  
7 I expect Mr. Worden not to interrupt and chastise and  
8 tell the witness to just keep going until the witness  
9 thinks he's wasted enough of my time.

10 MR. WORDEN: So, Stephen, that's unfair. I  
11 know there are new people here today. Your tone has  
12 changed today. I don't know if it's because of the  
13 audience is different today. If I have things to say,  
14 I'm going to say them. I kept them at a great minimum  
15 yesterday. I will do so again today. The witness has  
16 his answer. If you don't like the answer, you want to  
17 move to strike, that's fine. He gets to answer the  
18 questions you ask.

19 THE WITNESS: The company is --

20 MR. RICHARDS: There isn't a pending question,  
21 Mr. Bernhardt.

22 MR. WORDEN: Let's go with the next question.

23 **Q. (BY MR. RICHARDS) Who is Christian Prasch?**

24 A. Christian Prasch -- sounds to me like  
25 Christian Prasch, from my memory, would have been one of

1 the greenmailing plaintiffs in Germany. That's from my  
2 memory.

3 Q. Did he hold bearer shares of 4Service Cloud  
4 Tech?

5 A. I don't know that for sure. Somewhere --  
6 pardon me. I'd like to clarify, if that's okay.

7 Q. Sure.

8 A. I imagine there might be a shareholder list  
9 from 4Service Cloud Tech, an old shareholder list. In  
10 examining the documentation of AmeriMark Automotive, one  
11 of the challenges in dealing is its predecessor  
12 incarnation, 4Service Cloud -- is that in Switzerland,  
13 once you do that conversion, the old company is stricken  
14 from the record. It's gone. It's sort of a rebirth.  
15 And, in fact, it's treated in the registry the same way.

16 So it's possible that Mr. Prasch would have  
17 been on a share ledger for 4Service Cloud, the  
18 predecessor to AmeriMark Automotive sometime earlier,  
19 but I don't remember seeing him specifically in those  
20 books and records. I do remember seeing his name  
21 elsewhere. In my memory of it, I thought it was that he  
22 was plaintiff in -- at the German litigation, but I'm  
23 not sure of that. I do remember the name.

24 Q. Will you look at the exhibit in front of you,  
25 and look on page 5 at Topic Number 2.

1 A. I am there.

2 Q. This topic reads, "The provenance and  
3 authenticity of documents produced or used by You  
4 including the subscription forms produced at  
5 PL\_2081-2000 -- 2100" -- excuse me -- "and the share  
6 register attached as Exhibit 36 to the amended  
7 complaint."

8 In the interest of not unnecessarily treading  
9 ground that we tread yesterday, we discussed the  
10 subscription forms that are referenced here at length  
11 yesterday; correct?

12 A. I -- can I see the subscription forms to make  
13 sure? I'm pretty sure I know what we're talking about,  
14 but I'd really like to clarify. So we have copies of  
15 those documents I can look at?

16 Q. If you're not able to answer my question,  
17 that's fine, but if you're able to answer my question,  
18 I'd like you to.

19 A. Well, I want to be sure I know what I'm  
20 talking about. I think I remember what we're talking  
21 about. I think I remember the forms. Certainly we had  
22 an exhibit yesterday, but I'd really like to clarify  
23 that. It's not that I'm not able to answer. I want to  
24 make sure my answer is truthful and accurate.

25 Q. With respect to any subscription forms that

1 you and I looked at yesterday, do you have any  
2 additional information regarding those forms in your  
3 capacity as a corporate designee of AmeriMark Automotive  
4 that you did not have in your capacity as a corporate  
5 designee of Capana?

6 A. If we're referring to in my capacity as the  
7 preparation that I've done -- in other words, did I  
8 segregate preparation Capana and testify about that only  
9 yesterday and I'm testifying only about Automotive  
10 yesterday [sic]? Is that the gist of your question?

11 Q. Yeah, I mean, is there anything that you felt  
12 you couldn't tell me yesterday because you only knew it  
13 in your capacity --

14 A. No. Sorry to interrupt you.

15 MR. WORDEN: Stephen, your point is well  
16 taken. Let's please not reask every question. Whatever  
17 he asked yesterday, it's going to be the same answer  
18 today, to the extent it was asked yesterday.

19 MR. RICHARDS: That was roughly the  
20 stipulation I was looking for.

21 A. No. I will expand on that stipulation for  
22 you, Counselor. No. I -- yesterday, when I testified,  
23 I wasn't segregating between preparation I had done for  
24 one or the other, and there may be something that I  
25 recollect today after thinking about it that I didn't



1 remember yesterday, but, no, I'm not segregating that  
2 sort of preparation. I understand your point entirely.

3 **Q. AmeriMark Automotive's contention in this case**  
4 **is that Mr. Markosian transferred 13 million shares of**  
5 **AmeriMark Group stock to a company called Whitetree**  
6 **Capital; correct?**

7 A. Let me parse to make sure that I understand  
8 what you said, but I think that that's correct. That's  
9 correct.

10 **Q. What evidence is there of that transfer?**

11 A. Well, there is certainly, as I discussed  
12 yesterday, the share ledger, the official share ledger  
13 of AmeriMark Group dated June -- excuse me --  
14 January 18 -- no. Hold on. Let me get that right. I  
15 think that's January 18th, 2019. It's the official  
16 share ledger of AmeriMark Group showing 13 million  
17 shares owned by Mr. Markosian -- excuse me -- owned by  
18 Whitetree Capital on that day.

19 We also have recent production from Whitetree  
20 Capital, I understand, that outlines the details of a  
21 deal between Mr. Markosian and Whitetree Capital. My --  
22 I haven't had the chance to look at those as closely  
23 because they're new, but my recollection of it is that  
24 there was an extensive back and forth regarding two term  
25 sheets. There's a draft term sheet. From my

1 recollection, it's got red lining in it.

2 The nature of the negotiations seems to have  
3 been that Mr. Markosian initially wanted a board seat on  
4 Whitetree Capital and wanted a majority, not a  
5 supermajority, a majority control of Whitetree Capital.  
6 It's reflected sort of in the first set of term sheets.  
7 It's pointed out during the correspondence and the  
8 documentation that this would trigger certain compliance  
9 problems. In particular, that Mr. Markosian, as a U.S.  
10 person, would have to be declared as the UBO --

11 (Reporter clarification.)

12 A. Yes. Thank you. That stands for "ultimate  
13 beneficial owner," it's an acronym, UBO. Interrupt me  
14 any time with that if you need.

15 That, of course, in correspondence from  
16 September, perhaps August, of 2018 until December of  
17 2018, is a problem that Mr. Markosian and his agents are  
18 trying to solve. Specifically, that as a U.S. person,  
19 and this is the result of increased enforcement of FACTA  
20 and FBAR -- these are the financial transactions  
21 reporting and financial bank account reporting  
22 regulations -- got much more intense starting 2016,  
23 2017, 2018.

24 So in 2018, Mr. Markosian is trying to find a  
25 transfer agent to dematerialize his shares. This starts

1 to articulate the problem that he's trying to solve,  
2 which I believe Whitetree does attempt to solve, and  
3 certainly goes a long way to evidencing why he would  
4 have done such a transaction with Whitetree, why it made  
5 sense. The issue there was very specific.

6 Bendura Bank -- a bank in Liechtenstein which  
7 was the transfer agent, paying agent, and also general  
8 banking provider for 4Service Cloud Tech AG, which was,  
9 of course, the predecessor company to AmeriMark Group --  
10 got nervous. Well, maybe that's an exaggeration, but  
11 certainly was bringing up issues with -- with the  
12 lawyers, Markus Thier among them, that Bendura Bank was  
13 nervous about U.S. persons who resided in the U.S.  
14 receiving shares or transferring from a Liechtenstein  
15 bank to U.S. persons that had brokerage accounts in the  
16 U.S.

17 The reason that this is an issue is because  
18 Liechtenstein has been on and off of the OECD gray list.  
19 This means for non-cooperation and tax investigations.  
20 So Liechtenstein bank started to get extremely nervous  
21 in this period.

22 This presented a problem for Mr. Markosian and  
23 the other shareholders at that time of AmeriMark Group,  
24 the 19 shareholders, all of whom except for, I believe,  
25 one, Friends & Equity GmbH.

1 (Reporter clarification.)

2 Friends & Equity GmbH, which was a Germany  
3 company, but everybody else was a U.S. person. So this  
4 is the problem that had to be solved. How do you get  
5 the shares to the brokerage accounts of their owners  
6 when all you have at the moment are registered shares?  
7 And they're going to be dematerialized and the transfer  
8 agent is going to want to send them. So Mr. Markosian  
9 had to solve that problem.

10 Again, this is September to December 2018.  
11 Bendura Bank goes back and forth, and this is important  
12 because you can see a diligent and good faith effort to  
13 try and solve the problem. Also, for Mr. Markosian's  
14 Swiss lawyer, Mr. Thier, going back and forth with  
15 officers of Bendura Bank with the listing agent  
16 Mr. Leshem, extensively trying to deal with the issue.

17 I, in my investigation of this to kind of look  
18 into what the background was behind the Whitetree  
19 transaction, found that this looked to me very good  
20 faith effort, and also it looked to me like there was a  
21 lot of different ways to solve the problem.

22 One way -- and this starts to bear directly on  
23 when Whitetree comes in to solve the problem -- would be  
24 to get a nominee to accept the pool of shares from the  
25 U.S. persons. Friends & Equity probably didn't have

1 this problem. They likely had brokerage accounts in  
2 Europe that were connected to Clearstream and could  
3 easily take Swiss shares which had been dematerialized  
4 into a Swiss central depository and take delivery of  
5 those, but the U.S. persons had this problem.

6 So one solution which was proposed, both by  
7 the lawyer and the listing agent, was to come up with a  
8 nominee company. So the nominee company would accept  
9 all of the shares of the U.S. persons, represent the  
10 U.S. persons in some capacity, and then could have  
11 access to the markets or at least have a brokerage  
12 accounts to which the shares could be delivered in  
13 common. You can see this from the discussions.  
14 There's, I think, 15 or 20 emails back and forth on this  
15 point.

16 Now, there's nothing intrinsically wrong with  
17 that. Nominees are used all the time. So first I sort  
18 of looked at it and thought, well, was this -- you know,  
19 is there anything funny going on? But that's not  
20 necessarily true. Nominees are used all the time in  
21 this context. The issue is not the use of the nominee.  
22 The issue is then the later disclosure of the ultimate  
23 beneficial owners, the people who control that, to  
24 various national authorities, particularly tax  
25 authorities. For example, in the United States, you

1 have to file, you know, your control of the 25 percent  
2 more of a foreign corporation. To the extent you have  
3 signing authority, you have to declare signing authority  
4 also. You have to declare it on your 1040 tax forms to  
5 the extent that you have signing authority on a foreign  
6 company.

7 Then I began to discover later -- in sort of  
8 looking at this transaction to determine how legitimate  
9 it was, whether it had happened, whether it had been  
10 properly conducted -- thanks to discovery from third  
11 parties that Mr. Markosian had been lying on all of his  
12 tax returns from 2016 all the way up until the last year  
13 that we had records. In the section describing his  
14 interest in foreign trusts or access to foreign  
15 accounts, he repeatedly says no. He does this with tax  
16 preparers, paid tax preparers, like Michael North of  
17 Katz, Sapper & Miller, like his accountants, Greg White  
18 of White & Associates, et cetera.

19 So this started to add some color to the  
20 motivation behind the Whitetree transaction and its  
21 ultimate eventual structure as the way it seems to have  
22 ended up. In particular, Mr. Markosian had a very  
23 serious problem, because not only did he have to come up  
24 with a nominee to take delivery of the shares, but since  
25 he had been lying to the tax authority, fraud, on the

1 order of six years, he was going to have to have a  
2 structure that did not disclose him as the UBO and did  
3 not disclose him as a controlling entity.

4 This is where the term sheet negotiations  
5 starts to ring true, because Markosian apparently asks  
6 for directorship and majority control in exchange for  
7 the contribution of his shares, and I think the number  
8 was actually higher than 13 million shares at first --  
9 or maybe he was going to get a higher stake. I'm doing  
10 that from memory.

11 So now we look at the negotiation down from  
12 the initial request, and here it is. It fits exactly  
13 the fact pattern of the prior several years, and it also  
14 fits exactly the issue that Mr. Markosian has in terms  
15 of lying on his taxes and failing to file FBAR and FACTA  
16 filings for all of those years. He can't be shown in  
17 public documents as the majority shareholder of an  
18 entity, especially an entity that's going to be put on a  
19 stock exchange. There are going to be financial  
20 disclosures, and his name will be front and center.

21 So what is the result? Whitetree Capital, at  
22 that time a preexisting company, then comes down to the  
23 next term sheet wherein they say -- or the parties say,  
24 okay, we'll take only 13 million shares of AmeriMark  
25 Group in exchange for your stake -- it would eventually

1 be a stake in Whitetree.

2 Mr. Richards, you and I had talked about this  
3 before in a prior deposition before I had so much  
4 information of trying to figure out the significance of  
5 that number, 13 million, and I speculated, I think in an  
6 educated way and now I think it's correct, that  
7 13 million is the highest even million number that is  
8 less than 50 percent of the AmeriMark Group  
9 shareholders. This is perfectly convenient. It means  
10 that Mr. Markosian will be just shy of a 50 percent plus  
11 one, and that, in theory, would mean that banks,  
12 brokerages, et cetera, would not be required to declare  
13 him. His name wouldn't be front and center. And, in  
14 fact, that appears to be the way that it came out. It  
15 was 13 million shares that ended up in Whitetree's  
16 custody.

17 Then there's the issue of him not being on --  
18 a member of the board of the directors. That issue is  
19 the same. He would have to be disclosed in public  
20 documentation as a signing authority. So he doesn't  
21 have signing authority in Whitetree. In a way this is  
22 unfortunate because if he had signing authority in  
23 Whitetree, he probably would have had more control over  
24 the 13 million shares that he granted to Whitetree. I  
25 think that's part of the problem later and one of the



1 reasons that it makes me think that the Whitetree  
2 transaction was authentic and it just got out of control  
3 for him, because while he asked for a board seat, he  
4 didn't get one.

5 Now, other things that make it very, very  
6 clear that there's evidence that this traction was  
7 completely real -- first of all, it's recorded in the  
8 share ledger, and it seems like the share ledger  
9 recording matches quite carefully the preparation work  
10 that was being done by the lawyers and everybody else  
11 and by the initial discussions, which I believe started  
12 in -- this is from my memory -- between Whitetree and  
13 Mr. Markosian, who directly communicated with  
14 Whitetree -- I think it was in December of 2018. Then,  
15 in early January -- and I remember now for sure. It was  
16 January 18th, 2019 -- is the first share ledger of  
17 AmeriMark Group that shows Whitetree with,  
18 coincidentally or not, 13 million shares. That document  
19 is only one document in the other chain of evidence that  
20 comes along.

21 Mr. Markosian's agent, Capital Lounge GmbH --  
22 which was retained all the way back in 2016 to work on  
23 the Marche Libre -- Marche Libre exchange application  
24 and also the Malta application and also the creation of  
25 AmeriMark Group -- now also writes the analyst report,

1 evaluation report, for the admission to trading of  
2 AmeriMark Group shares on the Vienna Stock Exchange.  
3 That report is dated June 17th, 2019, and that report  
4 lists, front and center, Mr. Markosian with his some 6.4  
5 million 441 thousand, I think, 500 shares from memory,  
6 as a minority shareholder of about 24 percent of  
7 capital, and Whitetree Capital, 13 million shares.

8 That report is then submitted to the exchange  
9 and published, and it's been on the web ever since  
10 June -- its publication date, June 17th, 2019, again  
11 showing, again, the -- and now in a public form, a very  
12 public form, offered as an analyst report, showing that  
13 stake.

14 Then you have the disclosures to the Vienna  
15 Stock Exchange in terms of the listing application,  
16 which lists Mr. Markosian with 6,441,500 -- I think,  
17 again, that's from memory -- and Whitetree Capital is  
18 the single largest shareholder with 13 million shares  
19 submitted to the exchange. Very, very official piece of  
20 documentation.

21 Then we have, later, in a presentation to the  
22 Vienna Stock Exchange entire listing committee  
23 consisting of five persons, which included, at least,  
24 Martin Wenzl and Susanne Plank -- I'll spell those for  
25 you later, to the court reporter, if you need -- Susanne

1 Plank -- a meeting that went four and a half hours at  
2 minimum, which included John Kirkland, the COO of Rymark  
3 and AmeriMark Group at the time, and Mr. Frank Hueser.  
4 Frank Hueser was the manager at that time of AmeriMark  
5 Group hired to deal with European expansion, which I'm  
6 sure will be a topic on deposition later. In that  
7 meeting, after Frank Hueser -- and this is his second  
8 time flying to Vienna on behalf of the company to  
9 present to the Vienna Stock Exchange. At that meeting,  
10 Frank Hueser outlines all sorts of activities happening  
11 in Europe with relation to the exchange, and  
12 Mr. Kirkland, in a FaceTime presentation, gives a full  
13 tour of, I believe, the Taylorsville facility of Rymark  
14 Inc. in the capacity of the COO of both Rymark Inc. and  
15 AmeriMark Group.

16 In that conversation, with Mr. Kirkland  
17 present, according to Mr. Hueser, the topic of Whitetree  
18 Capital as the single largest shareholder of AmeriMark  
19 Group is repeatedly raised. The exchange is naturally  
20 interested in who is the single largest shareholder, et  
21 cetera. My understanding is also that that question was  
22 imposed at least once to Mr. Kirkland, who had answered  
23 that he wasn't prepared to talk about anything on the  
24 European side, which I understand since he was the COO.  
25 But at no time did anyone say, no, Whitetree is not a

1 shareholder. And, in fact, the public documentation has  
2 supported Whitetree as a shareholder for all this time.

3 And now we have Mr. Markosian apparently on a  
4 share ledger of Whitetree as a stakeholder in Whitetree  
5 and we have -- despite the fact that Mr. Markosian and  
6 the defendants have been for years pretending that they  
7 have no idea who Whitetree was, it turns out that  
8 Whitetree was well known, not only to the defendants all  
9 the way in March 2020 -- because, number one it's listed  
10 in 15 or 20 emails between Rymark's controller, Vicky  
11 Small, and Katz, Sapper & Miller, the auditors,  
12 including emails to JP Bryan and Bryan Burns of Katz,  
13 Sapper & Miller.

14 In addition to that, more evidence that there  
15 was actually a Whitetree transaction and that Whitetree  
16 is actually known to the defendants, despite their  
17 vehement and repeated denials, there's a long discussion  
18 in Katz, Sapper & Miller about the Swiss tax audit in  
19 which Vicky Small, controller of Rymark, forwards the  
20 KYC information of the signatory to Whitetree, Erika  
21 Ziconnie [ph], whose name is on the signature of every  
22 share ledger that I've seen anyway and much of the  
23 documentation involving Whitetree. Ms. Small obviously  
24 knew exactly who she was and forwards that information  
25 to Katz, Sapper & Miller again in March 2020 in the

1 context of a Swiss audit.

2 So I understand that, very much like the first  
3 transaction that Mr. Markosian sort of engaged in where  
4 he somehow got shares -- 500,000 shares of AmeriMark  
5 Automotive to his friends, family, and employee members  
6 and that there's no documentation there because this is  
7 a private sale between private parties, and  
8 Mr. Markosian either retained, is withholding, or  
9 destroyed that documentation -- I suspect, because  
10 Mr. Markosian doesn't have a particular interest in  
11 acknowledging that Whitetree exists or that he was  
12 involved in it, that that documentation has been  
13 disposed of. It's only my suspicion, but when you ask  
14 me if there's any evidence that that transaction was  
15 real, frankly, I could go on for probably another  
16 ten minutes, but you look tired.

17 **Q. Well, let's begin with the January 18, 2019,**  
18 **share ledger that you referenced a couple of times in**  
19 **that answer. Who added Whitetree to that share ledger?**

20 A. Could we take a look at that share ledger? Do  
21 we have a copy of that document here?

22 **Q. Do you have -- do you have an answer to my**  
23 **question? Who added Whitetree to that?**

24 A. Who added Whitetree to that. Well, what I  
25 know about the origin of that share ledger, which I've

1 testified to already just now, is that that original  
2 template of the share ledger actually came for the  
3 lawyer. I think it was Markus Thier. And you can see  
4 this. This is -- again, December 15, 16, 17; right?  
5 And -- or maybe -- maybe it might even be early January.  
6 And there's the interaction between Nicolai Colshorn and  
7 the lawyer. And the certain -- there's certain --  
8 several drafts of the share ledger.

9 One of the drafts of the share ledger earlier  
10 than that was developed directly from the documentation  
11 the original shareholder list that Mr. Markosian  
12 provided. You can see, and I've taken a look at it,  
13 from that original list in 2017 that the addresses are  
14 roughly copied and roughly the same, that the dates --  
15 that the actual shareholders are in the same order.

16 The actual Excel document you can see drafts  
17 in production -- the template of the Excel document that  
18 shows up in many, many other versions of the share  
19 ledger, again, came from Markus Thier, and then that  
20 went to Nicolai Colshorn. There was some back and forth  
21 and discussion between Nicolai Colshorn, Markus Thier,  
22 and the listing agent Mr. Leshem, and the share  
23 holder -- the new share ledgers then produced. As to  
24 who exactly in that combination put Whitetree on, I  
25 couldn't tell you.

1 Q. I'm going to mark Exhibit D 109.

2 (Exhibit D 109 was marked.)

3 A. So we do have a copy -- well, no this is not  
4 the copy, but very well. I'm sorry. Please continue.

5 Q. (BY MR. RICHARDS) So do you see in front of  
6 you, Mr. Bernhardt, that Exhibit D 109 is an email from  
7 Adrian Zehnder to Mr. Leshem dated January 18, 2019?

8 A. I do. And I have to correct myself. I have  
9 been saying Markus Thier when I meant Adrian Zehnder.  
10 They're both at Gysi Partner. I apologize for the  
11 mistake.

12 Q. In the second paragraph of Mr. Zehnder's  
13 email, it says, "To your query: I have provided  
14 Mr. Colshorn with a shareholders' list to be signed and  
15 returned to you. The draft is attached to this email."

16 Do you see that?

17 A. I do.

18 Q. And we see the draft attached. It's the next  
19 page of this exhibit, the next physical page, I should  
20 say. This looks like a draft of a share register;  
21 correct?

22 A. It is. And this is exactly the Excel sheet I  
23 was referring to.

24 Q. But Whitetree's not on it; right?

25 A. Not on this example, no.

1           **Q.     So why wasn't Whitetree on it as of**  
2     **January 18, 2019?**

3           MR. WORDEN:   Calls for speculation.  
4           You can answer.

5           A.     Well, one of the reasons is because until the  
6     transaction was reported to the company it's not  
7     possible to put it in the share ledger.  I've testified  
8     on this in numerous ways.  I'll repeat myself again.  
9     The company is not able to register a transaction,  
10    especially when they're only registered shares, until  
11    the parties to a transaction actually report that.

12           I've given the example before, and I'll give  
13    it again, as so to why it would be that there would be a  
14    transaction that would not be recorded in the share  
15    ledger.  I also want to point out this is not the signed  
16    share ledger.  This is a draft share ledger, and there  
17    are many other draft share ledgers too.  So it's not  
18    necessarily surprising that it might not be accurate  
19    yet.

20           If Bob and Sally are shareholders --  
21           (Reporter clarification.)

22           A.     If Bob and Sally are shareholders in a Swiss  
23    company and that company has registered shares, and the  
24    registered shares -- that means they're listed in a  
25    share ledger, very much like the one in this exhibit;



1 right? These are the shareholders. Bob sells his  
2 shares -- let's say he has 500 shares -- to Phil. The  
3 company has no way of knowing that that transaction has  
4 happened. And in Switzerland, the company, in fact,  
5 isn't really allowed --

6 (Reporter clarification.)

7 A. To poke that hard away at it. It was a bit of  
8 a flub.

9 The company's interest is in -- and the board  
10 of directors has a responsibility to the best of their  
11 efforts to maintain an accurate share ledger, but best  
12 efforts is the key there. Bob has sold shares to some  
13 third party. If Bob doesn't report that the shares are  
14 sold to the third party and the third party doesn't  
15 report his new shareholding to the company, well, the  
16 company has no way of knowing that transaction has taken  
17 place.

18 In the -- you can get even more visanteen [ph]  
19 with this, and this bears directly on why Whitetree  
20 might not have been in this particular example. Adrian  
21 Zehnder doesn't appear to have been involved in the  
22 Whitetree transaction. So his draft of the share ledger  
23 necessarily wouldn't -- necessarily have Whitetree in  
24 it.

25 Now, again, we have a private transaction

1 between Mr. Markosian and Whitetree, and neither has  
2 yet, as of this moment, apparently reported that  
3 transaction. I believe that transaction was consummated  
4 something like January 15, 16, 17, 18, something like  
5 that, and this, of course, you can see this email is  
6 January 18. So, again, who has reported the  
7 transaction?

8 Also note that it's in Mr. Markosian's  
9 interest not really to report the transaction until he  
10 has to because there are compliance issues here. So  
11 it's possible that things were going on in the  
12 background that made it that there was some delay or  
13 there was motivation to delay reporting that  
14 transaction.

15 Now back to the Bob and Sally example. The  
16 other way you can get even more difficult is the filing.  
17 What if the third party -- and this is -- this will come  
18 right into play when we start talking share counts.

19 (Reporter clarification.)

20 A. What if the third party now presents itself to  
21 the company and says, "I'm a shareholder," and has a  
22 brokerage account statement? Well, now you have  
23 overcounted shares because the seller has not reported  
24 their share. The buyer has shown that they own shares,  
25 but the company now has a quandary because they don't

1 know where those shares exactly came from.

2 So this is another example in which you can  
3 see it's not always true that these are totally accurate  
4 all the time. A share ledger is a snapshot, like a  
5 balance sheet, and the moment actually it's printed and  
6 signed, it's liable to be out of date and obsolete  
7 within minutes if somebody, without reporting themselves  
8 to the company, sells their shares and somebody else  
9 buys the shares. So it's not -- it's not unusual at all  
10 that the lawyer of the company, who's acting on all the  
11 information, would provide a draft that doesn't include  
12 the most recent transactions.

13 Q. (BY MR. RICHARDS) When was Whitetree  
14 transaction reported to AmeriMark?

15 A. At least by January 18th, 2019.

16 Q. At least by -- I'm sorry -- January 18th?

17 A. Let's -- the dates of the share ledger that is  
18 first signed by Nicole. It might be the 19th. I'm  
19 sorry.

20 Q. Whatever the date is on that ledger?

21 A. On the signed one, it had to be at least by  
22 then.

23 Q. I'm going to mark Exhibit D 110.

24 (Exhibit D 110 was marked.)

25 Q. (BY MR. RICHARDS) Mr. Bernhardt, you have in

1 front of you what's been marked as Exhibit D 110. This  
2 is a January 24th, 2019, email from Mr. Leshem to  
3 Mr. Colshorn. Do you see that?

4 A. I do.

5 Q. And Mr. Leshem says to Mr. Colshorn, "Please  
6 sign and forward attached shareholder list to  
7 Computershare." Do you see that?

8 A. I do.

9 Q. And on the reverse side of the page is the  
10 attachment, and you see that this is another draft  
11 shareholder list?

12 A. I do.

13 Q. Correct? Unsigned, yes?

14 A. This one is unsigned.

15 Q. But this one includes Whitetree Capital, yes?

16 A. It does.

17 Q. So did Mr. Leshem add Whitetree Capital to  
18 this shareholder register?

19 A. I don't know.

20 MR. WORDEN: Objection. Calls for  
21 speculation.

22 Q. (BY MR. RICHARDS) Who would know?

23 A. Honestly, I don't know. Could -- it could  
24 have been Adrian Zehnder. It could have been Leshem.  
25 It could have been Colshorn. It could have been

1 somebody from Whitetree reporting the transaction. It  
2 could have been somebody representing Mr. Markosian  
3 reporting the transaction.

4 **Q. Why didn't you ask Mr. Leshem in preparation**  
5 **for this deposition?**

6 A. Why didn't I ask Mr. Leshem what?

7 **Q. Who added Whitetree to the share register?**

8 A. Well, frankly, it seemed pretty clear to me  
9 that the share ledger followed exactly the path of the  
10 transaction in terms of, in December, the discussions  
11 and from what I saw of the Whitetree production in  
12 January 14, 15, 16, the closing of something -- the  
13 closing of the transaction, the dates on the share  
14 ledgers for Whitetree matching the date 19 June or 18  
15 June, whatever the signed version is.

16 It didn't occur to me that it would be  
17 important to know precisely who had corrected the share  
18 ledger, because it looked to me to be quite authentic.  
19 It also looked to me to really follow the entire  
20 chronology. So there's a lot of looking into that I  
21 spent as you can tell from my testimony. I spent a  
22 great deal of time looking, not just into the share  
23 ledger, but the three months of activity that preceded  
24 it in four different countries.

25 **Q. Who -- when did Mr. Colshorn sign the share**

1     **register?**

2           A.     Well, as far as I know, he signed it on the  
3     proper date.

4           **Q.     The email we're looking at now, though, is**  
5     **six days later; correct?**

6           A.     This isn't a signed version. This is a  
7     version that's going to be sent, in theory, to  
8     Computershare. Computershare doesn't actually care  
9     whether it's a signed version or not.

10          **Q.     If Computershare doesn't care whether it's a**  
11     **signed version, then why didn't Mr. Leshem just send an**  
12     **unsigned version to Computershare?**

13          A.     I don't have the answer to that question.

14          **Q.     If Mr --**

15          A.     Wait just a sec. What did you -- could you  
16     read the question back for me? I apologize.

17                     (Record read: 46:10-12.)

18          A.     Well, so why did Mr. Leshem send an unsigned  
19     version? Well, Computershare is going to take the  
20     electronic version -- and, by the way, we talked  
21     yesterday about when the Heric Gardiner/Eric Gardiner  
22     typo error came in. In this particular one, I don't  
23     know if it's a mistake. I'm kind of curious. This one  
24     has Heric Gardiner in it. So what's happening here with  
25     these electronic ledgers, it's just an Excel sheet, and

1 the Excel sheet is used by the company, AmeriMark  
2 Automotive in this case, in a couple of different ways.

3 One, you take a mail merge function in Word  
4 when you're sending out correspondence to the  
5 shareholders, and you can kind of see the evidence of  
6 that because here the Heric Gardiner error that has  
7 caused so much jumping up and down by the defendants was  
8 introduced, according to Mr. Colshorn, basically because  
9 an autocorrect changed Eric to the German name Heric.  
10 Obviously he is German -- Mr. Colshorn. So this is the  
11 electronic version.

12 Computershare is going to do very much the  
13 same thing. You're sending them an electronic version  
14 so they can import it. If you send them a signed PDF,  
15 they're just going to have to go and have somebody type  
16 it in anyway. So Computershare -- all those electronic  
17 shareholders -- they want, from the director, which is  
18 what Mr. Leshem is saying here, who is the authority on  
19 the share list, to send an electronic copy. So the fact  
20 that this was sent to Computershare days after the  
21 transaction was consummated doesn't strike me as unusual  
22 at all. I don't know how long it would take to kind of  
23 put it together or how it was exactly reported, but this  
24 doesn't seem unusual to me.

25 **Q. If Mr. Colshorn had signed the share register**

1 on January 18th, why was Mr. Leshem asking him to sign  
2 it again on January 24th?

3 MR. WORDEN: Calls for speculation.

4 A. I don't know the answer to that. Perhaps  
5 Mr. Leshem hadn't seen the signed version by that time.  
6 Perhaps Mr. Colshorn hadn't forwarded it to him.  
7 Mr. Colshorn wouldn't necessarily have a reason to  
8 forward to Mr. Leshem the share ledger until it was  
9 needed for something because that's a corporate record.  
10 I can certainly see a circumstance in which the share  
11 ledger is signed, it sits in the books and records in  
12 the company, Mr. Leshem takes the draft version that he  
13 has, not knowing that it's been signed, and then goes to  
14 Mr. Colshorn and says, "Well, we're going to have to  
15 send this to Computershare. Here you go."

16 Q. (BY MR. RICHARDS) What's the earliest date  
17 that the signed share register appears in plaintiff's  
18 production?

19 A. I don't know the answer to that question off  
20 the top of my head. And when you say appears in  
21 plaintiff's production, do you mean when did we produce  
22 it?

23 Q. No. When's -- if -- when's the earliest date  
24 it was attached to an email?

25 A. I don't know the answer to that question, but



1 it's in a file in the books and records that's from  
2 January or February. I think those were quarterly  
3 files. I think there's a file that's January, February,  
4 March, first quarter, and I remember it being in the  
5 first quarter file -- the physical document that we used  
6 to produce.

7 Q. I'm going to ask that the court reporter mark  
8 Exhibit D 111.

9 (Exhibit D 111 was marked.)

10 Q. (BY MR. RICHARDS) Mr. Bernhardt, I've marked  
11 as Exhibit D 111 an email chain. There are two emails  
12 on the page, and the lower one on the page is from  
13 Mr. Leshem to Jeremy Blimbaum. Do you see that?

14 A. I do.

15 Q. Who is Mr. Blimbaum?

16 A. I think Mr. Blimbaum was either a lawyer or  
17 consultant in -- let me look at the date on this. I  
18 think he was in France, and I think he was retained by  
19 the company, by which now I think we're -- by this time  
20 we're talking about, I believe, AmeriMark Group. He was  
21 retained by the company to work with Euronext on behalf  
22 of the company. I think that's the case.

23 Q. And Mr. Leshem's email included some  
24 information about Mr. Markosian. Do you see that?

25 A. I do.

1 Q. His date of birth and his address, yes?

2 A. I do.

3 Q. And then it has a number of shares, and the  
4 number of shares listed here is 19,441,667; correct?

5 A. That's correct.

6 Q. Is that the number of shares that Mr.  
7 Markosian owned as of the date of this email?

8 A. Not according to my understanding, no.

9 Q. Then why did Mr. Leshem get the date -- get  
10 the number wrong?

11 MR. WORDEN: Calls for speculation.

12 A. You'll notice I'm not on this email, and I  
13 wasn't involved with Mr. Blimbaum. Not only that, but  
14 in this -- you'll also notice that the company is not on  
15 the copy of this email. I don't know what Mr. Leshem is  
16 doing. I don't know if he made a simple error. I don't  
17 know if he took something from earlier and copy-pasted  
18 it. I don't know.

19 (Reporter clarification.)

20 Q. (BY MR. RICHARDS) Will you grab out of your  
21 stack over there Exhibit D 109?

22 A. Yes.

23 Q. And this is the email from Mr. Zehnder;  
24 correct?

25 A. Yes.

1 Q. And it attached the draft unsigned share  
2 register. Do you recall that?

3 A. I do.

4 Q. And do you see on that share register that  
5 Mr. Markosian's shareholdings are identified as  
6 19,441,665 --

7 A. 655.

8 Q. -- 655. Thank you.

9 A. Yes, I do.

10 Q. That's a different number even from  
11 Exhibit D 111, the email.

12 A. It is.

13 Q. Correct? What's -- what's the explanation for  
14 that discrepancy?

15 A. Mr. Leshem is clearly in error, passing the  
16 wrong information for one reason or another. I don't  
17 know why.

18 Q. Was Mr. Leshem aware of the Whitetree  
19 transaction?

20 A. That's not clear when he was or wasn't aware  
21 of it. But at least from the correspondence I've seen,  
22 it looks like he did some introductions, and then I  
23 don't see him involved in the transaction after that.  
24 Did he know that there was a Whitetree and there was a  
25 connection? It looks from the production that I've seen

1 that, yes, he did, and he started the introductory  
2 process. But after that, I don't see him anymore in  
3 production, from my recollection.

4 Q. Well, he also sent an unsigned share register  
5 to Mr. Colshorn on January 24th that included Whitetree  
6 and asked Mr. Colshorn to sign it; correct?

7 A. Well, but when you talk about aware of the  
8 Whitetree transaction, do we mean the transaction or the  
9 end result of the transaction? I know I'm splitting  
10 hairs there, but was he involved in the process? I  
11 don't know. Certainly he knew who Whitetree was, and he  
12 knew who Whitetree was far before this transaction -- is  
13 my understanding.

14 Q. As of January 24th, Mr. Leshem was aware of  
15 the result of the transaction, which is that Whitetree  
16 owned 13 million shares; correct?

17 A. I think that's clear.

18 Q. And we have no idea why he would have told  
19 Jeremy Blimbaum otherwise a few weeks later?

20 A. Well, he's wrong on two counts; right? He's  
21 wrong on what the actual count would be absent to  
22 Whitetree transaction, and he's wrong that the Whitetree  
23 transaction is not reflected to what was sent to  
24 Blimbaum.

25 Q. I think you testified yesterday that you've

1 had hundreds of conversations with Mr. Leshem in the  
2 course of this dispute, before and after the complaint  
3 was filed; is that correct?

4 A. So by the course of this dispute, are we  
5 talking about since September 16th, 2020, when  
6 Mr. Pehrson sent the disavowal letter?

7 Q. Sure.

8 A. Yes. For sure, I've had hundreds of  
9 conversations with him.

10 Q. And not one of those hundreds of conversations  
11 has touched on this email; correct?

12 A. On that particular email, I don't remember.  
13 The Blimbaum email?

14 Q. Yes, the Blimbaum email.

15 A. No. I mean, that's -- I wasn't copied on it.  
16 The company's not copied on it.

17 Q. Plaintiffs produced it; correct?

18 A. Yes, it was in the files from somewhere. I  
19 think it was -- probably came from Mr. Leshem's files.

20 Q. Yeah, actually. I want to correct myself.  
21 Plaintiffs didn't produce this. It came from  
22 Mr. Hesterman's production.

23 A. I'm sorry. So thank you.

24 I mean so, no, I haven't had occasion to talk  
25 to him about it.

1 Q. Are you going to after this deposition?

2 A. I'm not sure that's a good idea for me to be  
3 having conversations with Mr. Leshem based on this kind  
4 of stuff given that you attempted to name him as a  
5 party, no.

6 Q. I'm going to mark Exhibit D 112.

7 (Exhibit D 112 was marked.)

8 Q. (BY MR. RICHARDS) Mr. Bernhardt, I've marked  
9 as Exhibit D 112 an email chain between -- there's  
10 Damian Pelletier and Jeremy Blimbaum. Do you see that?

11 A. I do. How was this produced?

12 Q. This is also from Mr. Hesterman's production.

13 A. I don't see a Bates stamp.

14 Q. Yeah, he didn't --

15 A. That's why I'm asking.

16 Q. He didn't apply Bates stamps, but yeah.

17 That's --

18 A. You're representing it was from him? I  
19 believe you. I just want to know.

20 Q. Yeah. I'm happy to make that representation.

21 A. Good. Thank you. That's fine. Please  
22 continue.

23 Q. So the first four physical sheets of this  
24 document are the original, and then I had a translation  
25 made, and those are the subsequent four sheets, sheets 5

1 through 8. Do you understand what I mean there?

2 A. I do.

3 Q. So if you'll turn the page to the second page.  
4 I'm looking in the French portion. Do you see an email  
5 from Jeremy Blimbaum to two Euronext email addresses on  
6 February 5th, 2019?

7 A. I'm having trouble even with the headings for  
8 French. So bear with me but let me --

9 Q. And I'm sorry. I steered you wrong.

10 A. No, no. Not your fault.

11 Q. The following page.

12 A. Does anyone in here speak French? Not your  
13 fault. Let me try to make sure I'm in the right spot.  
14 We're in page 2.

15 Q. So the page -- the next page. Yes.

16 A. This page.

17 Q. The second physical sheet.

18 A. The second -- thank you. The second physical  
19 sheet, and you're talking about the first full email.

20 Q. Correct.

21 A. I have that now, and this one is the  
22 English -- it has English headers. Please continue.

23 Q. And you see, halfway through that email or so,  
24 that Mr. Blimbaum gives the Euronext exchange the same  
25 information about Mr. Markosian, that he received -- he,

1     **Mr. Blimbaum, received from Mr. Leshem, namely,**  
2     **Mr. Markosian's name, date, address, and shareholdings;**  
3     **correct?**

4             A.     I do see that -- was the -- I believe you.  
5     I'm just wondering. Was the share number 19,441,667?  
6     Is that also what was -- yes, it was. So, yes, I do see  
7     that, and, yes, that does match.

8             **Q.     And that's wrong; correct?**

9             A.     To my understanding, that's wrong. Let me  
10    look at the date again. February 15th, 2019. That does  
11    not look correct to me.

12            **Q.     And you don't have any explanation for why**  
13    **this error occurred?**

14            A.     No. It's clearly wrong. I mean -- and I'll  
15    expand on that too. It's not just wrong by omitting  
16    Whitetree. It's wrong, I think, without the Whitetree  
17    transaction. I think the number would be different.

18            **Q.     Meaning that's the wrong number preceding the**  
19    **Whitetree transaction? Is that what you mean?**

20            A.     I think -- I think that's right. It wouldn't  
21    even be right before the Whitetree transaction, I  
22    believe. We can go back and check, but I don't think  
23    that's the point of your question.

24            **Q.     I'm going to mark Exhibit D 113.**

25                    (Exhibit D 113 was marked.)



1 Q. (BY MR. RICHARDS) Mr. Bernhardt I've marked  
2 as Exhibit D 113 an email from to Miron Leshem to  
3 Florian Stahl and Alexander Tietze?

4 A. Alexander Tietze, yes.

5 Q. Tietze. And --

6 A. I must admit it's an unfortunate name.

7 Q. And you're CC'd and DS Chang is also CC'd;  
8 correct?

9 A. That's also correct.

10 Q. And this email is dated August 31st, 2020,  
11 yes?

12 A. It is.

13 Q. Was Capana in negotiations with Philomaxcap  
14 about this time?

15 A. Yes. We started having -- I won't say  
16 directly with Philomaxcap, but we started having  
17 conversations with the German entity that's been called  
18 "ficon" Philomaxcap, et cetera, and also its majority  
19 shareholder Philocity Global GmbH, which is a German  
20 company, again a majority. So, yes, by this time we've  
21 been in those discussions since March of 2020.

22 Q. So Mr. Leshem attached a number of documents  
23 to this email. I've included excerpts from the second  
24 document that he attached described here as IM, and you  
25 understand IM to mean information memorandum?

1 A. I do.

2 Q. So if you turn the page, you see a document  
3 entitled "Information Document May 2019"; correct?

4 A. I do. I'm familiar with many drafts of this  
5 document.

6 Q. Do you know who drafted this one?

7 A. This document was almost certainly a  
8 combination of -- I don't know -- but I'm pretty  
9 confident that it was a combination of Mr. Leshem and  
10 Capital Lounge, which was the listing services  
11 consultant to Rymark at the time, and this is the  
12 document that predated and was revised, eventually ended  
13 up at the Vienna direct.

14 (Reporter clarification.)

15 Q. I'd like you to turn to Bates page 15023.

16 A. I appreciate the Bates stamp. It makes it  
17 much easier. 150 --

18 Q. 23.

19 A. I have it.

20 Q. Do you see paragraph 8.5 here?

21 A. I do.

22 Q. As of the date of the information document,  
23 and according to the shareholder's register, the  
24 principal shareholder is indicated below, Nicholas T.  
25 Markosian, 19,441,655 shares, 97.2 percentage of

1 ownership. Do you see that?

2 A. I do.

3 Q. That's not right?

4 A. On this date -- well, let's pick a date here.  
5 So this particular document says it's a draft from  
6 May 2019; right?

7 Q. Yep.

8 A. I don't know when it was actually printed, and  
9 this email is submitting this in August of 2020; right?  
10 And so no. On neither of those dates would this be the  
11 correct number of shares for Mr. Markosian, according to  
12 any documentation that I have, but, on the other hand,  
13 this is a draft document, and I've actually seen  
14 several -- in reviewing the versions of this, I've seen  
15 several erroneous copies of this draft document  
16 circulated but not as official applications -- as draft  
17 documents. You can see clearly here under 8.3 that the  
18 publication of figures for the financial year ending  
19 December 31st, 2018 --

20 (Reporter clarification.)

21 A. I'm sorry. I was warned earlier. I get  
22 carried away.

23 You can see there are several gaps in here.  
24 And this is fairly typical when you're composing this  
25 documentation. The other thing to note here. What is

1 the capacity in which this is being passed along, and  
2 it's clearly a draft document. And I note also that --  
3 just give me another second because I think I remember  
4 certain places that there are other gaps where pieces  
5 aren't filled in. This is a preliminary kind of opening  
6 discussion document. It's not signed. It's not  
7 finalized.

8 So, yes, it's wrong. But this -- and at this  
9 stage -- let's think about this again. End of August?  
10 These are early discussions to try and get things moving  
11 along. I'm not even sure we had the final financials at  
12 this point or not, whether these Keddington &  
13 Christensen financials that were attached -- by the way,  
14 I don't think Keddington & Christensen knew that their  
15 financials were being used by Rymark in this way, and  
16 they were forwarded by Vicky Small to -- for this  
17 purpose.

18 But this is draft documentation. So it's  
19 surprising to me that that error has continued to be  
20 propagated, but, in a way, it's draft documentation. It  
21 can be corrected later, and the deal wasn't consummated  
22 until far after this.

23 Also just to be completely clear, this was not  
24 the version that was submitted in any form either to the  
25 pre-listing process or to the -- any listing committee

1 for Euronext.

2 Q. What information memorandum was submitted to  
3 Euronext?

4 A. Well, I don't think there ever got around all  
5 the way to being a full information memorandum submitted  
6 because at some point, when the application was sent,  
7 then the rejection followed pretty quickly after that.  
8 And I don't know that the full application and full  
9 final information memorandum, which would have to be  
10 reviewed a little bit by the exchange and then corrected  
11 before the final listing -- I don't think that was ever  
12 finalized. I could be wrong about that, but I don't  
13 think it was ever finalized.

14 Q. Will you grab Exhibit D 112 again.

15 A. I have it.

16 Q. So you recall that these are emails involving  
17 Jeremy Blimbaum; correct?

18 A. I do.

19 Q. And if you'll turn to -- and I'm sorry these  
20 aren't Bates stamped.

21 A. It's okay.

22 Q. The third to last physical page of the  
23 document.

24 A. Last physical page. Second to last?

25 Q. The third to last.

1 A. The third to last. I'm there.

2 Q. And you see on the front side of that page  
3 there's an email from Jeremy Blimbaum dated  
4 February 5th, 2019. Do you see that?

5 A. The first full email on the page?

6 Q. Yes.

7 A. I do.

8 Q. And that email begins, "Dear, madam" -- and  
9 I'm reading here from the English transaction. "I am  
10 following up with you regarding the reverse listing  
11 operation through a capital increase of 20 million  
12 shares at .05 CHF of 4Service Cloud (a Swiss law  
13 company) in favor of AmeriMark. I have been able to  
14 gather all the requested documents (the delay was mainly  
15 due to the finalization of the information memorandum),  
16 which you will find attached."

17 So I have not seen the information memorandum  
18 that was apparently attached to this email. Have you?

19 A. No. Well, I don't see -- interesting that  
20 it's not attached to this email. Apparently it wasn't  
21 attached to this email. This is from Hesterman's  
22 production?

23 Q. Correct.

24 A. Well, I know that his production generally  
25 includes attachments. Perhaps Mr. Blimbaum did not

1 include it.

2 Q. Well, I mean, this is a down chain email, if  
3 that makes sense.

4 A. It does makes sense.

5 Q. So this is not an email that would include the  
6 attachment, but just to be clear, you've never seen an  
7 information memorandum submitted to Euronext; correct?

8 A. Well, I'm not going to swear to that. I might  
9 have seen a finalized information memorandum that was in  
10 the files that was submitted to Euronext, but not in a  
11 context that I knew what it was. I've certainly seen  
12 many of the information memorandums or draft information  
13 memorandums related to Euronext.

14 And the other thing I'll note about this is  
15 that, again, now Mr. Blimbaum was forwarding to Euronext  
16 apparently erroneous information about Mr. Markosian.

17 (Reporter clarification.)

18 Q. And your expectation is that the information  
19 memorandum would also contain that erroneous  
20 information, yes?

21 A. I mean, I'd have to speculate. I can't say  
22 that. No. I mean, I haven't seen what was actually  
23 submitted, the actual submission document.

24 Q. Would that document -- that information  
25 memorandum that was actually submitted be in AmeriMark

1 **Automotive's files?**

2 A. Well, I know I've seen several information  
3 memorandums, but, again, which one was specifically  
4 sent, I don't know. I haven't -- again, with this  
5 email, the company is not copied on this email. So  
6 that's unfortunate, because if Mr. Colshorn, for  
7 instance, had been copied on this email, then we would  
8 have a copy of exactly what had been submitted. It  
9 looks to me like Mr. Blimbaum was the one who submitted  
10 it, and the company was not copied.

11 **Q. Okay. I'm sorry to go back and forth.**

12 A. That's fine.

13 **Q. Now I want to return to D 113.**

14 A. Yes.

15 **Q. And I'd like you to turn to the Bates page**  
16 **ending in 29 -- 15029.**

17 A. 15029. I have it.

18 **Q. And you see that these are financial**  
19 **statements of Rymark Inc. for the years ended**  
20 **December 31st, 2016, and 2017; yes?**

21 A. I do.

22 **Q. And it looks like these were essentially**  
23 **incorporated wholesale into this draft of an information**  
24 **memorandum; is that right?**

25 A. Can I take a quick look? I think you're



1 right. I'd like to just take a peek at a couple of  
2 things. What I'm really looking for is to see if these  
3 are the signed statements. My memory of this is that  
4 they are. Where is the representation letter?

5 They are. Although, that does look weird that  
6 it gets spaced out, but these would be the April 10,  
7 2018, signatures, and, yes, it does look like they've  
8 been wholesale incorporated. And I believe that I've  
9 also seen copies of this information document in which  
10 they were. The provenance of this KNC stuff actually is  
11 that it came directly from Ms. Small to support the  
12 listing application. I understand from later testimony  
13 that maybe she didn't have permission to do that.

14 Q. I'd like you now to turn to Bates page ending  
15 in 32.

16 A. Ending in 32. Yep. I'm there.

17 Q. And this is, essentially, the -- I mean, it's  
18 titled on the previous page "Independent Accountant's  
19 Review Report." This is essentially a cover letter to  
20 the financials themselves, yes?

21 A. Yes.

22 Q. And you see a heading there "Known Departure  
23 from Accounting Principles Generally Accepted in the  
24 United States of America"?

25 A. I do, and I'm familiar with those passages in

1 so many financial statements.

2 Q. And the first sentence here is "Accounting  
3 principles generally accepted in the United States  
4 of America -- require the financial statements of an  
5 entity that is wholly owned by another entity to be  
6 consolidated in the owning entity's financial  
7 statements."

8 Do you see that?

9 A. I do.

10 Q. Is that an accurate description of accounting  
11 principles, to your understanding?

12 A. I mean, I'd have to go back and look -- you  
13 know, ask me back in 2018 and see exactly what those  
14 were. I'm not an accountant. I'm not a CPA. I don't  
15 have a reason to doubt that that's accurate.

16 Q. Rymark did its own financials rather than  
17 having its financials consolidated into AmeriMark  
18 Automotive; correct?

19 A. No, that's not correct.

20 Q. Okay. Can you explain to me how it isn't  
21 correct?

22 A. Well, yes, in quite some detail actually. So  
23 on April 1st, 2016, Rymark signed the listing agreement  
24 and the term sheet with a note to capital to start the  
25 process of creating AmeriMark Automotive by contributing

1 Rymark, as we all know, 100 percent into the new  
2 structure.

3 When that was done, Ms. Small, on April 21st,  
4 2016, sent, with Mr. Markosian in copy, a series of  
5 financial statements. That was only one email of  
6 several. Ms. Small was tasked, as far as I can tell, by  
7 Mr. Markosian, with assembling a great deal of financial  
8 statements by Rymark, including four years of prior  
9 financial statements, I think at least. It was three or  
10 at least four years. These were prepared by White &  
11 Associates mostly, from my recollection.

12 Since this was 2016, I think that would have  
13 2013, 2014, 2015 reviewed, because there were no audits  
14 yet, that I understand, at Rymark -- reviewed financial  
15 statements. It might have gone even further back.

16 I believe this is also the time that Ms. Small  
17 went so far as to send very, very large numbers and  
18 other pieces of information along to the listing agent  
19 and to the attorneys Daniel Gysi in Switzerland -- that  
20 the defendants never had any communications with  
21 according to their pleadings -- including things like  
22 general ledger, including a series of tax files.

23 Ms. Small went so far as to provide the  
24 passwords to the zip files so that the people at the  
25 other end could undo the encrypted tax files. A huge

1 amount of information. And the purpose of this was  
2 extremely clear and direct. It was to create first  
3 initial financial statements, including consolidated  
4 financial statements, which consolidated Rymark up into  
5 the structure.

6 Just a reminder, this is not three weeks into  
7 the initial project after April 1st, 2016. Those  
8 financial statements were sent to, among others, Bayat  
9 Vible [ph]. Bayat Vible [ph], now deceased, is a  
10 certified stamped auditor, was a regulated auditor, and  
11 his firm Charles Trust -- also stamped and regulated in  
12 Switzerland as a full auditor, and he prepared the  
13 initial balance sheet for AmeriMark Automotive. That  
14 balance sheet was dated June 6th, 2016.

15 In support of that balance sheet -- and this  
16 is where, frankly, the fraud began, and it's changed in  
17 complexion of this entire case in this last three weeks  
18 that I've started to understand this. I always assumed  
19 that Mr. Markosian had sort of been caught in a bit of a  
20 spiral and that he had made up a few shareholders and  
21 had to start forging signatures and got away from him.  
22 But, in fact, the fraud started immediately, because  
23 Ms. Small, again, at Mr. Markosian's direction, falsely  
24 represented that Rymark Properties LLC was a wholly  
25 owned subsidiary of Rymark. That was false. It's

1 always been false. Nick Markosian in his testimony has  
2 told us so. He's the 100 percent owner.

3 That information was taken by the Vible [ph]  
4 auditor and turned into a set of consolidated financial  
5 statements for AmeriMark Automotive, the initial  
6 financial statements. They also included standalone  
7 financial statements, again, dated June 6th, 2016,  
8 standalone financial statements. Unfortunately, that  
9 means there was a very serious fraud committed because  
10 that overvalued AmeriMark Automotive with 900,000 --  
11 900,000 francs instead of a substantially lower amount  
12 if AmeriMark Properties had not been included.

13 What's important to know about that in the  
14 context of the consolidation is those consolidated  
15 financials that pass up Rymark's revenue, Rymark's  
16 balance sheet, Rymark's expenses straight into the  
17 accounting, and Mr. -- frankly, Mr. Vible [ph] did a  
18 good job. They're pretty strong financial statements.  
19 Those financial statements serve as the basis for every  
20 corporate transaction that followed, and they were  
21 totally fraudulent.

22 And there were more consolidations. In fact,  
23 those financial statements were updated frequently and  
24 showed total consolidation of Rymark into the structure,  
25 culminating even further. At the eve of the AmeriMark

1 Group transaction, Ms. Small and Mr. Markosian, on  
2 Markosian scanners, Rymark's scanners, from Rymark email  
3 addresses, signing two key documents -- the first a  
4 valuation of Rymark Group, which shows Rymark and Rymark  
5 Properties erroneously, fraudulently, as a hundred  
6 percent subsidiary, consolidating the equity of those  
7 entities into AmeriMark Automotive.

8 Both Ms. Small, in her capacity as controller  
9 of Rymark, and Mr. Markosian, in his capacity as  
10 president of Rymark, signed those documents and  
11 forwarded them on, this time to the new auditor,  
12 Mr. Kammerlander -- Mr. Kammerlander, who is a member of  
13 the board of directors of Capana, the plaintiff here,  
14 and also a counter defendant since defendants decided to  
15 sue him for doing his audit work.

16 That document then -- those set of documents,  
17 those consolidated financials consolidating Rymark up  
18 into AmeriMark Automotive, were used for Mr. Markosian  
19 and the other 18 shareholders to offer their Swiss  
20 securities for sale to 4Service Cloud Tech, another  
21 Swiss company, fraudulently because 4Service Cloud Tech,  
22 ignorant of these misrepresentations, had no clue that  
23 it was buying tainted shares.

24 So, yes, those were consolidated. The other  
25 document that's very key there was the confirmation

1 document, again, sent April 24th, 2018. That  
2 confirmation document which Mr. Markosian signed  
3 asserted that Rymark was the 100 percent subsidiary of  
4 AmeriMark Automotive on that day, and those were sent to  
5 the others. So, yes, there are plenty of times when  
6 Rymark has produced consolidated financials  
7 consolidating all of Rymark into the Swiss entities.

8 **Q. Will you turn to page -- Bates page 15036.**

9 A. 5036, yes. Yes.

10 **Q. Do you see that there -- there's data on this**  
11 **page that records dividends?**

12 A. I do not see dividends on this page, no.

13 **Q. So do you see that on the left side, balance,**  
14 **December 31st, 2015?**

15 A. I see dividends here. I don't see dividends  
16 declared, unless they're listed as retained earnings  
17 deficits. That's possible.

18 **Q. So there are dividends listed here.**

19 A. If retained earnings deficits, which could be  
20 dividends, are dividends, then, yes, I think there would  
21 be dividends here.

22 **Q. They're identified as dividends; correct?**

23 A. If they're under the retained earnings  
24 deficits column, I think that's correct.

25 **Q. Did Rymark ever pay dividends to AmeriMark**

1 **Automotive?**

2 A. Not to my knowledge, no, and this became a  
3 rather serious issue when there was a Swiss tax on it.  
4 Swiss tax on it began -- and I'm doing this from memory.  
5 The Swiss audit began of AmeriMark Automotive, and by  
6 extension Group, or perhaps the other way around --

7 (Reporter clarification.)

8 A. Let me restate that for the poor court  
9 reporter who has to tolerate me.

10 The Swiss tax audit -- and I'm doing this all  
11 from memory. But the Swiss tax audit began somewhere, I  
12 think, in 2018 or 2019, and it was in reference to  
13 AmeriMark Group and AmeriMark Automotive. And the  
14 reason this dividend issue came up -- and I think it's  
15 important to discuss how we came along the information  
16 that the dividends hadn't been paid up -- is because, in  
17 Switzerland, a tax on dividends or on hidden  
18 dividends -- that is, something that the Swiss tax  
19 authority deems to be a dividend -- is an onerous tax.

20 The directors -- members of the board of  
21 directors are joint and severally liable for those  
22 dividends with the company. So you get a lot of  
23 attention very quickly. The Swiss tax authority loves  
24 enforcing these because they get compliance right  
25 away -- the directors have a pinch.



1                   So there was sort of some consternation in  
2   2019 and 2020 when the Swiss tax authority began a  
3   routine audit. They do them almost by -- by rule, every  
4   four years or whatever rotating basis, and they started  
5   questioning at first the valuation of Rymark. Ms. Small  
6   and Keddington & Christensen, including Greg Jenkins  
7   [ph], participated in a number of conference calls in  
8   order to address some of the issues brought up by the  
9   Swiss tax authority. So there was immediate response by  
10   Rymark to deal with these things.

11                  In the course of that -- and by the way,  
12   Rymark also provided substantial documentation on Rymark  
13   Properties in order to validate what the Swiss tax  
14   authority was asking about, the value of the  
15   contribution of Rymark back in -- and I think, again,  
16   this is -- included both transactions, 2016 Automotive  
17   and Group in 2018. So both of those were being looked  
18   at.

19                  So Rymark provided a great deal of  
20   information, including about Rymark Properties, as if  
21   Rymark Properties was a wholly-owned subsidiary of  
22   Rymark in order to satisfy the Swiss tax authority that  
23   the contribution had not been undervalued. Undervalued  
24   is important. When you undervalue a contribution like  
25   that, the Swiss tax authority says, well, you were

1 supposed to pay a stamp duty on a larger amount. So  
2 they're always looking for that.

3 So Ms. Small provided a great deal of  
4 information, and the Swiss tax authority was mostly  
5 satisfied on that issue. They assessed a small -- you  
6 know, something like 20,000 on that. But then yes. And  
7 here we come to the dividends.

8 They -- and I believe somewhere in the  
9 documentation, the Swiss tax authority saw something  
10 that was actually called distributions, not dividends,  
11 and that's what keyed their attention. And I think  
12 Mr. Colshorn and Mr. Small, not being familiar with the  
13 sort of English use of distributions, didn't understand  
14 that those had been dividends. And, yes, Swiss tax  
15 authority said, "If you've been paid dividends, if your  
16 subsidiary has paid dividends and you're the 100 percent  
17 owner, they must have gone to AmeriMark Automotive. So  
18 where are the taxes that you should have paid on those  
19 dividends?" There were no good answers for this  
20 question.

21 By this time it's now March to perhaps April  
22 or May of 2020, and that question started to filter up  
23 into Rymark -- down to Rymark, I should say -- from  
24 AmeriMark Automotive. Mr. Colshorn was, of course, very  
25 upset about it because he was potentially personally

1     liable for any assessments here, and eventually the tax  
2     authority got very aggressive about it because their  
3     view was there had been dividends and there had been no  
4     payments, and not only that, but they hadn't been  
5     declared.

6             And this went on for quite some time, and,  
7     frankly, it's very unusual to me that within a few  
8     months of -- of that discussion, which included,  
9     tangentially at least, Bryan Burns and JP Bryan at Katz,  
10    Sapper & Miller at the time and Vicky Small discussing  
11    the Swiss tax on it and what it meant and how to resolve  
12    it. Then it was awfully unusual, from my perspective,  
13    that three -- two and a half to three months later,  
14    September 16, 2023, the disavowal letter gets written.  
15    I thought that timing was convenient. So, yes, this was  
16    a huge issue and continued to be an issue.

17            Eventually, the Swiss tax authority attempted  
18    to assess a 250,000 franc tax, which Mr. Colshorn was  
19    unbelievably upset about. That's one of the reasons  
20    that we got involved in May 2019 -- is because that tax  
21    issue came along, and we agreed to pay it off  
22    unconditionally, knowing that actually the owner of  
23    Orbital at the time, the entity that was doing the  
24    transaction, was very skilled in dealing with the tax  
25    authorities and actually made a bit of his cottage

1 business dealing with these dividend issues and helping  
2 directors through it.

3 Eventually, I think they came down from 250  
4 to -- from my memory, 57,700 Swiss francs, which we then  
5 paid off, laboriously, in a payment plan over, I think,  
6 six months.

7 MR. RICHARDS: Thank you. So I'm going to  
8 move to strike everything except for the sentence and  
9 note for the record that I asked a yes-or-no question,  
10 and the witness spoke for more than five minutes.

11 Q. (BY MR. RICHARDS) Will you please turn to  
12 Bates page 15040.

13 A. I will. 150 --

14 Q. 40.

15 A. 40.

16 Q. These are the notes to Rymark's financial  
17 statements; correct?

18 A. Correct.

19 Q. And do you see the heading Income Taxes about  
20 halfway down the page?

21 A. I do.

22 Q. And this paragraph says, "The company elected  
23 to be taxed as an S corporation, and as such, the  
24 company's taxable income and losses are passed through  
25 to its stockholder. Accordingly, no provision for

1 income taxes has been made."

2 As of the date of this document, May 2019, who  
3 was Rymark's stockholder?

4 A. May -- give me the date again -- I'm sorry --  
5 that you referred to.

6 Q. May 2019.

7 A. May 2019 the stockholder was 100 percent  
8 AmeriMark Automotive.

9 Q. Were Rymark's taxable income and losses passed  
10 through to AmeriMark Automotive?

11 A. They were not.

12 Q. And in your view, that was a violation of tax  
13 law; correct?

14 A. We didn't understand it at the time, but yes.  
15 Now -- can I expound on that a little bit without you  
16 striking or --

17 Q. Briefly.

18 A. Briefly.

19 MR. WORDEN: If you have to answer a question,  
20 answer the question.

21 A. The first person who sort of began to notice  
22 this was Nicole Kuster, who was the accountant at the  
23 time for both the AmeriMark Group and AmeriMark  
24 Automotive. And it's -- the S corp issue is an obscure  
25 issue. It's so --

1 I'm sorry. I kicked John Worden, my attorney,  
2 under the table. That was not me signaling anything.

3 The S corp issue is a bit of an obscure  
4 issue -- so obscure that we had to retain Helm Advisors  
5 in Switzerland to actually explain to us how bad a  
6 situation actually was after quite some time, but yes.  
7 The gist of it was, until 2018, you could not be an S  
8 corp, and that's true, I think, of Utah both and  
9 federally. You cannot have a S corp and do pass-through  
10 taxation if you have, one, a non-national person  
11 shareholder, even one, or, two, a foreign shareholder.  
12 So to be 100 percent owned by a foreign shareholder is a  
13 complete -- you can't make S corp elections. You can't.

14 This issue was brought up by Mr. Markosian's  
15 own employees also two or three times. So we didn't  
16 catch it until Ms. Kuster started asking about it in the  
17 context of the Swiss tax audit.

18 Q. (BY MR. RICHARDS) Will you turn to page --  
19 Bates page 15042.

20 A. I'm there.

21 Q. Do you see Note 7 that's titled "Related Party  
22 Transactions"?

23 A. I do.

24 Q. And this says, "Due from Related Parties."  
25 And then the first item is a "Receivable from an entity

1 that is owned by stockholder that is in the process of  
2 being formed. The receivable is considered long term."

3 A. Yes.

4 Q. Stockholder here does not mean AmeriMark  
5 Automotive; correct?

6 A. Well, I can't answer that with any certainty.  
7 There's some context here. I believe that it should  
8 have at this day. Keddington & Christensen was never  
9 told the details of the AmeriMark Automotive  
10 transaction. And so since they prepared these reports,  
11 I believe they did so with erroneous information. Also,  
12 it was always curious to us, from the very beginning,  
13 why the stockholder was not named. It seemed very  
14 unusual construction that you would just say stockholder  
15 without any discussion.

16 Q. The next paragraph reads, "Receivable from an  
17 entity that is owned by stockholder that leases the  
18 premises to the Company."

19 AmeriMark Automotive does not own any entities  
20 that lease anything to Rymark; correct?

21 A. I can't think of any. I don't -- I can't  
22 imagine that that this is true. I can't imagine that  
23 AmeriMark Automotive was leasing anything to its  
24 subsidiary at the time or now.

25 Q. Third paragraph. "Receivable from an entity

1     that is owned by stockholder's wife."

2                   AmeriMark Automotive -- fair to say it does  
3     not have a wife, yes?

4           A.     This was our first clue that there was a big  
5     problem here. I noticed it at some point. I think I  
6     even brought it up in some deposition. Yes. I don't  
7     think that even in Switzerland that companies can marry.

8                   (Reporter clarification.)

9           Q.     (BY MR. RICHARDS) Turn to Bates page 15043.

10          A.     I am there.

11          Q.     This is still Note 7. Do you see the heading  
12     Related Party Notes Payable?

13          A.     I do.

14          Q.     And the first paragraph references a note  
15     payable based on an agreement that the stockholder has  
16     with a family investment firm. You're not aware of any  
17     such agreement between AmeriMark Automotive and a family  
18     investment firm, are you?

19          A.     No. This would be, I believe, AAR  
20     investments.

21          Q.     And so the stockholder in this -- you  
22     understand stockholder here to mean Mr. Markosian?

23          A.     At the time I did not. Now I do.

24          Q.     So when you say "at the time," what time do  
25     you mean?



1           A.     Well, when I first started looking at this  
2     material in any detail, it wasn't clear to me that  
3     stockholder should mean anything other than AmeriMark  
4     Automotive, but as you go through it now and look at  
5     this, obviously it has family investment and a wife.

6           **Q.     Yeah. I mean, that was going to be my next**  
7     **question.**

8           A.     Yeah.

9           **Q.     When you saw stockholder's wife, it wasn't --**  
10    **it wasn't clear to you that that couldn't be AmeriMark**  
11    **Automotive?**

12          A.     It was once we started paying attention in  
13    detail, especially after the Swiss tax audit.

14          **Q.     These financials were submitted to the Vienna**  
15    **Stock Exchange; correct?**

16          A.     Just a moment. I'm not sure that that's  
17    correct in this case. I can't say that for sure, no.  
18    Some version of them, yes.

19          **Q.     Did anyone at the Vienna Stock Exchange ever**  
20    **raise questions about the meaning of stockholder in**  
21    **Rymark's financial statements?**

22          A.     No. No. And I think one of the reasons for  
23    it and one of the reasons most the Europeans didn't  
24    catch that either is because these financial  
25    presentations are sort of alien to the way you would do

1     them in Europe. You would do IFRS, and there you simply  
2     list a table, and you have to show related parties and  
3     these kinds of disclosures in a completely different  
4     way. So I think it's one of the reasons that nobody  
5     caught the S corp issue either. You know, these --  
6     these are different presentations than are expected.

7           **Q.     What about Philomaxcap? Did they catch the S**  
8     **corp issue as you just said?**

9           A.     Well, this transaction with Philomaxcap didn't  
10    happen until much later, and by that time they were  
11    completely aware of the litigation. We didn't  
12    consummate the transaction until over a year after --  
13    well, let me think. It was July 2023 when we filed this  
14    litigation. It was over a year later. No. Even more  
15    than that. We finally closed the transaction in  
16    February of this year -- no. Sorry. Let me go back.  
17    February of '24. I'm sorry.

18                So we've been in litigation for, you know,  
19    several months beforehand. So by that time, the  
20    presentation of what AmeriMark Group was and the hair on  
21    it and the issues in it was known to everybody. So --

22           **Q.     So prior to the filing of the litigation and**  
23     **Philomaxcap receiving notice of that, did Philomaxcap**  
24     **ever raise the S corp issue?**

25           A.     No. It wasn't brought up because we never got

1 to the stage where the raw financials were really  
2 cranked away at. We did commission a German auditor,  
3 and it was a court mandated German auditor who prepared  
4 preliminary reports on the valuation, but those were  
5 based on the stock itself and not consolidated  
6 financials.

7 We would have had to do a full-blown  
8 consolidated financials once we got the transaction  
9 going, but, unfortunately, because of the September  
10 letter and all of the other interference from the  
11 defendants, they gummed up the works on that transaction  
12 for years. By the time we finally got around to doing a  
13 full-blown audit and going through all of this material  
14 and also doing a discussion about the litigation and the  
15 risks and et cetera, it was well clear that the  
16 financials were tainted.

17 **Q. You mentioned a German auditor. Do you mean**  
18 **Mr. Wesling [ph]?**

19 A. Wesling [ph]. He was one. He was the court  
20 appointed auditor who had a very limited role. He  
21 didn't conduct a complete audit. He did very much what  
22 Mr. Kammerlander would do -- looked at the very basic  
23 documentation, looked at the share counts, looked at the  
24 asset being contributed.

25 (Reporter clarification.)

1           A.     Not a fairness opinion. Just a certification  
2     of the capital increase, and he was court appointed. In  
3     fact, his audit wasn't finally used in the final  
4     transaction, and it wasn't -- to even call it an audit  
5     is overdoing it a little bit. But, yes, Mr. Wesling  
6     [ph] was involved from 2020 to 2022.

7           **Q.     And when you say he was court appointed, did**  
8     **the court select him? Who paid for him? How did that**  
9     **work?**

10          A.     Paid for by the company, and I think we loaned  
11     the company money to do that at the time. I don't  
12     remember that 100 percent. By court appointed, I mean  
13     there were a series of auditors who were sort of in a  
14     rotation that are credentialed to do this exact work.  
15     When I say court appointed, I also mean not like a  
16     court -- like, for example, a U.S. district court. I  
17     mean a registered court. In Germany, the registries are  
18     provided over by registry court and judges. They call  
19     it a court. In Switzerland, it's a little more benign.  
20     So when I say court appointed, appointed by the  
21     commercial registry as a certified auditor to certify a  
22     capital contribution.

23          **Q.     Got it. So he was credentialed in some**  
24     **important way?**

25          A.     He was a full-blown auditor also but didn't

1 act in that capacity for this work.

2 Q. Set aside Mr. Wesling [ph]. Who was the other  
3 German auditor you mentioned?

4 A. It was a firm -- and I'm going to struggle to  
5 remember this, and it's very difficult to pronounce.  
6 MHL is their initials. They're the -- one of the  
7 largest law firms and accounting firms in Germany, and  
8 we commissioned them to do the fairness opinion,  
9 including discussing the litigation, when we finally  
10 were able to close the transaction in February of last  
11 year. I'm saying February of last year. That's from  
12 memory.

13 There was another set of auditors, of course,  
14 Baker Tilly, which is a substantial audit firm where the  
15 general statutory auditors were Philomaxcap at the time.  
16 I had extensive conversations which had to be  
17 confidential with Baker Tilly because litigation was  
18 still going, but they were constantly informed about the  
19 fact that there was litigation and about the dispute.  
20 It wasn't something that we were able to publicly  
21 disclose until we filed suit because it had been deemed  
22 that that would be illegal in Switzerland or Germany.

23 Q. When did MHL issue its fairness opinion?

24 A. It would have been attached to the minutes of  
25 the report of the annual meeting of the shareholders

1 which approved the transaction. I'm going to say -- I'm  
2 working this totally from memory -- that that must have  
3 been end of '23, maybe beginning of '24.

4 **Q. After the litigation was filed?**

5 A. Yes, for sure. I had extensive discussions  
6 with MHL in the litigation. I mean, tens of hours.

7 **Q. And did MHL identify I think what you and I**  
8 **both described as the S corp issue, quote/unquote?**

9 A. I identified for them. I told them both about  
10 the S corp issue and about the issue of the litigation,  
11 about the dispute over titles. So yeah. I pointed that  
12 issue out. I pointed the dividend issue out.

13 I also pointed out that there might be --  
14 related to the S corp issue and the dividend issue, that  
15 there might be significant tax liability after the fact  
16 that would have to be cleaned up in Rymark and that any  
17 fairness opinion that they were going to do was going to  
18 have to account for that. Specifically, to the extent  
19 that Rymark was not permitted pass-throughs and took  
20 them, it should have been paying corporate level tax for  
21 all those years -- '16, '17, '18, '19, '20.

22 This is something else we had Helm Advisors,  
23 when they prepared their report for us, estimate, and we  
24 also were very curious to have an understanding of how  
25 to work that out. What do you have to do to restate?

1 How difficult is that to do? How aggressive is the IRS?  
2 These were all things I talked about with Helm and  
3 incorporated that into my discussions with MHL to make  
4 sure they had an understanding of what the issues were  
5 before they issued their fairness report.

6 One more note on the fairness report. The  
7 fairness report is conducted to a fairly stringent  
8 standard. It's called IDWS-8, I think. IDWS-8 is the  
9 fairness opinion standard. That will be important  
10 because anybody who looks at that standard can see what  
11 MHL was supposed to do for that fairness opinion.

12 MR. RICHARDS: Brooke, we've gone about 90  
13 minutes. Could you use a break?

14 COURT REPORTER: I would love one.

15 (Recess taken from 10:32 to 10:44.)

16 Q. (BY MR. RICHARDS) Mr. Bernhardt, I'm going to  
17 mark Exhibit D 114.

18 (Exhibit D 114 was marked.)

19 Q. (BY MR. RICHARDS) Mr. Bernhardt, do you see  
20 that you've been handed an April 26th, 2019, email from  
21 Mr. Leshem to Mr. Markosian, Mr. Rechtman, Mr. Hesterman  
22 with Mr. Blimbaum and Mr. Colshorn in CC?

23 A. I do. I'm familiar with this email.

24 Q. At this period of time, AmeriMark Group was  
25 applying to have 20 million new shares listed on the

1 Euronext exchange; is that correct?

2 A. I'll take a tiny little quip with that with  
3 the word "listed." I think listed often implies a  
4 public offering. I want to be careful about that. It's  
5 different in the U.S. and Europe. It was applying to  
6 have those shares admitted to trade. The distinction --  
7 which I'll be very brief on -- is important. What this  
8 means is that existing shareholders are having their  
9 shares admitted to trading so that they can trade and  
10 sell their existing shares on the exchange, not a new  
11 listing, so to speak.

12 Also, one other thing -- no. I'm sorry.  
13 That's it.

14 Q. Okay. And the Euronext denied the admission  
15 to listing or the admission to trading of those  
16 20 million shares; correct?

17 A. It did.

18 Q. Let's look at Mr. Leshem's email. The first  
19 paragraph says, "Attached hereto is the letter from  
20 Euronext Compliance regarding AmeriMark's application  
21 for admission to trading. The Euronext has taken a very  
22 hard and indeed harsh position. Their letter simply  
23 hides behind boilerplate legal language, such as  
24 references to their 'reputational risk'" -- in quotation  
25 marks --



1 A. Yep.

2 Q. -- "and falls back on their right to deny  
3 admission to any company."

4 Next paragraph.

5 A. Yes.

6 Q. "Without specific information, I can only  
7 speculate that the listing department may have felt the  
8 company's business was good, but compliance objected to  
9 other matters. The fact that the largest shareholder is  
10 a U.S. person probably counted against us."

11 Do you see that?

12 A. I do.

13 Q. Was the largest shareholder of AmeriMark  
14 Automotive a U.S. person as of the date of this email?

15 A. Not strictly in that sense.

16 Q. What do you mean by not strictly?

17 A. The UBO would have been a U.S. person, but,  
18 technically, he is incorrect here, because on  
19 April 26th, 2019, the largest shareholder -- single  
20 shareholder, not majority shareholder, would have been  
21 Whitetree Capital. So if Mr. Markosian was properly  
22 declaring himself as a UBO, he would have been the  
23 largest natural person shareholder, which is a  
24 distinction that may or may not have occurred to  
25 Mr. Leshem in this email.

1           Q.    But your belief is that Mr. Markosian knew, as  
2   of this email, that Whitetree had 13 million shares that  
3   used to belong to him, yes?

4           A.    Most certainly.

5           Q.    And you have no explanation for why Mr. Leshem  
6   would have said that the largest shareholder was a U.S.  
7   person?

8           A.    Well, look at who's on -- he's on here in  
9   copy. Maybe some of these people he didn't feel the  
10   need to disclose that Mr. Markosian was behind  
11   Whitetree. I mean, you're asking me to speculate. I  
12   can think of reasons why he would do that, why he  
13   wouldn't to Orié Rechtman or -- or to -- particularly  
14   Orié Rechtman want to disclose that.

15                But, you know, part of the problem there is,  
16   of course, at least as far as I can tell,  
17   Mr. Markosian's participation in the Whitetree structure  
18   wasn't particularly above board, and it certainly wasn't  
19   being declared in the United States, and it was also not  
20   properly declared when the Vienna application came  
21   around. So I don't know if that's what's going on here.

22                The fact that the largest shareholder is a  
23   U.S. person is technically incorrect. Certainly, the  
24   largest natural person shareholder was still  
25   Mr. Markosian through his participation in Whitetree. I

1 don't know that that's what Mr. Leshem is saying here,  
2 though. So without more context, like, for example, how  
3 Mr. Markosian wanted to or didn't to want to disclose  
4 his role at Whitetree, I can't really answer that  
5 question.

6 **Q. I gather you have not discussed this email**  
7 **with Mr. Leshem before?**

8 A. I have discussed this email with Mr. Leshem.

9 **Q. Tell me about that discussion.**

10 A. I discussed it in the context that he saw the  
11 accusation apparently that he had misled Mr. Markosian  
12 about this email. I think that was a particular  
13 reference to this phrase about boilerplate and  
14 explaining the rationale. And he complained to me, as  
15 Mr. Leshem sometimes is apt to do, that how can that  
16 accusation be made against him when he attached the  
17 actual letter? That was the context of my discussion  
18 with him about this email.

19 **Q. You didn't discuss with him the statement --**  
20 **his statement that AmeriMark Group's largest shareholder**  
21 **was a U.S. person; correct?**

22 A. I didn't catch it at the time that I had a  
23 discussion with him, no. Actually, the first time I've  
24 really recognized the context of that statement is when  
25 you brought it up to me.

1 Q. If you had caught it, would you have discussed  
2 it with him?

3 A. I would have asked exactly this question I  
4 just asked you. Were you trying to refer to the fact  
5 that he was the largest natural person shareholder?  
6 Because that's a tortured construction, if so.

7 Q. The next physical sheet in this exhibit Bates  
8 numbered 623 is the letter from Euronext itself, and I'm  
9 sorry. It's fuzzy. This is how it was produced.

10 A. Can I stop you there for a second? I'm really  
11 familiar with this letter. In our production, we  
12 produced a fuzzy one and a clearer one. So I know this  
13 letter, and I'm happy to talk about the fuzzy version.

14 Q. Okay. And I actually think the clearer one  
15 may make an appearance later on, but we'll see.

16 Just so I have a clear understanding of what  
17 the Euronext did, the Euronext refused admission to  
18 trading of the 20 million new shares?

19 A. That's correct.

20 Q. And when I say new shares, I mean the shares  
21 that resulted from the reverse merger with AmeriMark  
22 Automotive; correct?

23 A. That's exactly correct.

24 Q. And it also suspended trading on the then  
25 traded shares of AmeriMark Group; correct?

1           A.     That's also correct. That was worth 3.4  
2 million bearer shares. To my memory, they had a par  
3 value of ten rappen, which is Swiss cents, and, yes,  
4 they suspended those and then eventually delisted them.

5           **Q.     And when you say eventually delisted,**  
6 **Romanette three, little Roman three.**

7           A.     Yes.

8           **Q.     Says that this letter is delisting them;**  
9 **correct? Or on a particular date? Is that what you**  
10 **mean?**

11          A.     Well, yes. There's a process to delisting.  
12 In -- generally, in these exchanges, you suspend first  
13 and then you delist because there are technical things  
14 that have to be done, for instance, with the securities  
15 depository. Sometimes you want to suspend rather than  
16 delist immediately because there's also the possibility  
17 that something might change and you don't want to do  
18 something irreversible. So usually it's suspend and  
19 delist. It's not 100 percent clear to me what the  
20 mechanics were here at the Euronext at this time, but I  
21 do think that it was a two-step process -- suspend and  
22 then delist.

23          **Q.     The -- the paragraph that immediately precedes**  
24 **those four Romanettes begins with "Taking into**  
25 **account" -- do you see where I mean?**

1 A. I do.

2 Q. "Taking into account the large amount of  
3 financial instruments to be listed along with the new  
4 shareholder structure" -- let's stop there. Do you have  
5 an understanding of why it mattered to the Euronext that  
6 there was a large amount of financial instruments to be  
7 listed?

8 A. I'm speculating a little bit, but I think I'm  
9 on good ground with this, and that is they were seeking  
10 to -- excuse me. AmeriMark Group was seeking to have  
11 admitted to trading 20 million shares at five rappen,  
12 Swiss cents, per share; right? Which is a sizable share  
13 capital to be increasing by. It more than -- I have to  
14 do the math again. It more than doubles the share  
15 capital existing in the company. This is a big  
16 transaction.

17 And so I think when they're talking about the  
18 large amount of financial instruments to be listed,  
19 they're talking about the relative ratio between the  
20 20 million new shares and the existing 3.4 million  
21 bearer shares, and it was -- it was going to go from --  
22 I do have the math in my head actually. It was going to  
23 go from 6.8 million in share capital, francs, to  
24 26.8 million. And I think that's what they're referring  
25 to here. I'm quite confident that's what they mean.

1           **Q.     Why would that have concerned them?**

2           A.     Well, for a company -- and 4Service Cloud  
3     was -- that had been moribund on the exchange for a  
4     while, had been listed on the Marche Libre before in  
5     2015, and then suddenly you have a massive transaction,  
6     you know, it attracts attention for sure. It's a big  
7     transaction. Increasing the share capital by that much  
8     is unusual. Normally in a company -- that's a lot of  
9     dilution for existing shareholders.

10               Normally when a company does something like  
11     that, it is a fraction, perhaps a sizable fraction, not  
12     a multiple of existing share capital. That's not always  
13     true, but it's definitely something that I would imagine  
14     would catch an exchange's attention.

15           **Q.     What about the new shareholder structure?**

16     **First of all, can you describe the shareholder structure**  
17     **in AmeriMark Group as of this time period?**

18           A.     Well, so at this time period, AmeriMark Group  
19     would have had the shareholder structure reflected in a  
20     January -- 18th or 19th. I'm forgetting now -- 2019  
21     share ledger; right? So it would have been the original  
22     19 -- I'll call them the Markosian shareholders,  
23     Whitetree Capital. I can't remember if there was  
24     anybody else in the share ledger, but that would have  
25     been the new share structure.

1                   But I think what they're talking about here  
2     with the new shareholder structure is actually that --  
3     you've got -- well, I have to speculate now. When they  
4     say new shareholder structure, they're certainly talking  
5     about the fact that the old shareholder, the old bearer  
6     shareholders, is now completely obviated by the new  
7     shareholder structure. In addition to that, they don't  
8     say it here, but the fact that there were two classes of  
9     shares with two different share capitals is an issue.  
10    And, frankly, all exchanges, as in stock exchanges, hate  
11    that. They hate it because it creates investor  
12    confusion, especially when you have two different  
13    share -- cap size and you have two different types of  
14    shares here. Registered shares and the existing bearer  
15    shares. So when they say that, I don't know that  
16    they're talking about the actual shareholders. They  
17    might be, but I think it's more likely that they're  
18    talking about the structure of the shares.

19           **Q. This sentence continues, "Euronext Paris**  
20    **deemed it appropriate for this request to be subjected**  
21    **to an enhanced due diligence review." What's your**  
22    **understanding of how that enhanced due diligence review**  
23    **proceeded?**

24           A. Well, normally for an admission like this, I  
25    guess there's a basic review, and I've never been



1 through any of these before, and so I rely on the books  
2 and records here because this is before I got involved  
3 with the project by about a month and a half.

4 But my understanding is that the admission  
5 process usually can be quite streamlined, but there are  
6 several concerns or, you know, unusual aspects of a  
7 transaction that might trigger an enhanced scenario, and  
8 what exchange is saying here, to my mind, is that  
9 between the -- they say it literally. It's a large  
10 amount of financial instruments. It's a big  
11 transaction. There's a lot of dilution. You're  
12 expanding the share capital a lot. Certainly they don't  
13 say it, but certainly it comes into play that this is a  
14 company that's been --

15 (Reporter clarification.)

16 A. -- moribund, docile, for a long time, and then  
17 suddenly there's a big transaction. Now that's not  
18 totally unusual, but definitely it's something that  
19 says, well, what's happened here? Obviously you have a  
20 new group of investors coming in taking a major  
21 position.

22 And shell companies or shelf companies --  
23 companies that are kind of, you know, sitting there,  
24 still just kind of hanging on but don't have any  
25 operations yet are really waiting for an investor to

1 come in and do that because it's expensive to list.

2 So here it's not that that's unusual in  
3 itself, but this is a big transaction. There's two  
4 classes of shares. The shares have different nominal  
5 values. Certainly, it makes it more complicated for the  
6 exchange, and the exchange's number one concern is  
7 actually exchange profits, but its second concern is for  
8 investor well-being and confusion potentially. And this  
9 could be -- I think the intention was always to merge  
10 the shares anyway, but that's a lot of work. I think  
11 that's what's being responded to here.

12 You asked about enhanced diligence review.  
13 These things -- the way I read the sentence -- and I've  
14 done some diligence on it in the past. I talked to a  
15 lawyer who did some work with Euronext to kind of  
16 understand this letter, but I think that's what's going  
17 on. So they trigger an enhanced due diligence review  
18 because it's an usual transaction, more scrutiny.  
19 That's my -- that's my understanding.

20 **Q. And it sounds like, in the abstract, at least,**  
21 **you don't take issue with the Euronext view that these**  
22 **two particular features maybe warrant a closer look than**  
23 **another deal?**

24 **A. Not at all. I think they're exactly correct.**

25 **Q. Next sentence begins, "Considering" -- do you**

1     **see where I mean?**

2           A.     I do.

3           **Q.     "Considering the market abuse and reputational**  
4     **risks resulting from this investigation" -- What do you**  
5     **understand market abuse and reputational risks to mean**  
6     **here?**

7           A.     Well, this sentence, I think, sort of shows  
8     that the authors of this letter didn't have English as  
9     their first language, and let me parse it out. I've  
10    spent a lot of time thinking about this because it's  
11    been back and forth in pleadings quite a bit.

12                "Considering the market abuse and reputational  
13    risks resulting from this investigation" -- how are --  
14    it's not that market -- did market abuse result from  
15    this investigation? Did reputational risk result from  
16    this investigation? I don't know. You know, I have to  
17    kind of stick words into the exchange's mouth here, into  
18    Euronext's mouth, but I think what they meant to say is  
19    "Considering the market abuse and reputational risks  
20    potentially shown from this investigation" -- I hope the  
21    investigation did not create market abuse, for instance.

22                So I think it's a sloppy sentence, but what  
23    it's certainly saying is that they looked deeper into  
24    the transaction and found things they didn't like. I  
25    also asked very carefully, again, to the lawyer I talked

1 to -- I don't think it was a privileged conversation --  
2 I asked very carefully, you know, what does this  
3 language mean? And here I think Mr. Leshem is actually  
4 pretty close when he says it's boilerplate.

5 Also, I looked at the press releases that the  
6 Euronext made related to this announcement, and there  
7 were two at least -- one announcing the suspension and  
8 one announcing the delisting, which is another reason  
9 that I segregate those. And my understanding of that --  
10 they're very, to be honest, schizophrenic. The  
11 suspension cites a totally different set of rules that  
12 are cited to do the suspension than does the delisting  
13 than does this letter.

14 So I don't know. You know, I can only  
15 speculate on what was going on with the exchange here,  
16 but it does feel like they really had a bunch of  
17 different parts all not talking to one another on this  
18 paragraph.

19 **Q. Do you believe that the Euronext was worried**  
20 **about market manipulation?**

21 A. It's hard for me to, you know, delve windows  
22 into -- windows of the Euronext's soul here. Everything  
23 that I've been told -- you know, I haven't talked to the  
24 Euronext about it, but everything I've been told says  
25 that this is fairly boilerplaty stuff and that the risks

1 and market abuse stuff is like the catchall trump card.  
2 They can do whatever they want. They don't have to  
3 justify themselves. They can kick you out "because we  
4 think there's a risk of 'X', market abuse. We think  
5 there's a reputational risk." The reputational risk to  
6 the exchange is the catchall because the final  
7 determiner of that is the exchange.

8 Q. I'm going to mark Exhibit D 115.

9 (Exhibit D 115 was marked.)

10 Q. (BY MR. RICHARDS) After the Euronext denied  
11 the admission to trading of the new shares of AmeriMark  
12 Group and suspended and subsequently delisted the then  
13 traded shares of AmeriMark Group, a decision was made to  
14 seek listing of AmeriMark Group on the Vienna Stock  
15 Exchange; is that correct?

16 A. Excuse me. I'm so sorry.

17 That is correct.

18 Q. Who made that decision?

19 A. Well, I think the initial idea came from  
20 Mr. Leshem, and I think it might have even come to  
21 Mr. Leshem -- and I'm speculating now, but I think it  
22 came to Mr. Leshem from Mr. Coenen of Capital Lounge,  
23 the --

24 (Reporter clarification.)

25 A. I'm sorry -- the listing service -- I flubbed

1 my words there. The listing services provider for  
2 Rymark was Capital Lounge GmbH, a German company, and  
3 its principal was Alexander Coenen, C-o-e-n-e-n.

4 The reason I'm kind of persuaded by that is  
5 because at the time Mr. Coenen and his company, Capital  
6 Lounge, were certified capital market coaches for the  
7 Vienna Stock Exchange. You can go on the websites, and  
8 they had a list, and there were only, I think, at the  
9 time, like, eight or nine. And because he was C in the  
10 list, he was, like, third on the list there for  
11 certified market coaches.

12 Not only that, but he had a very good  
13 relationship, which I came to understand personally,  
14 with Martin Wenzl, who was the head of listing in the  
15 Vienna Stock Exchange. So -- and I'm fairly sure -- I'm  
16 speculating a little, but I'm fairly sure that a  
17 conversation between Mr. Leshem and Mr. Coenen probably  
18 happened because Mr. Coenen was at least partially  
19 involved in the Euronext transaction.

20 And, again, I'm guessing here a little bit,  
21 but I think it's highly likely that he had to kind of  
22 figure out another solution very quickly. And you'll  
23 notice that this is quite quick.

24 If I can go back to the letter really quick  
25 just to look at the date.

1           **Q.    Yes.  I'm interested in this.  So yes.  Go**  
2     **ahead.**

3           A.    Sorry.  Your deposition.

4                    So, you know, this is April 26th, 2019, and  
5     the letter from the Euronext, I think, is the same  
6     day -- no, it's not.  It's the 16th the letter is dated.

7                    By the way, just on this exhibit again, the  
8     hard copy of this letter and the envelope is in  
9     AmeriMark's files.  We have the hard copy.  I think I  
10    even scanned -- had the envelope scanned just to be  
11    careful.

12                   So it took a while for this to get, and it  
13    came -- those also addressed to Mr. Markosian, but  
14    Mr. Colshorn got it, and I don't know how quickly he  
15    forwarded it.  This is before my time.

16                   So now here we are two months, right,  
17    June 24th from -- almost exactly, from April 24th, two  
18    months later.  So obviously some discussions had  
19    happened in the past.  By this time, I had been  
20    involved.  So starting in May of 2019.  But my  
21    understanding is, going back to your original question,  
22    that it was Alexander Coenen probably, since he was able  
23    to do it, helping Mr. Leshem solve the problem of the  
24    failed admission to trading on Euronext.

25           **Q.    And during this time period, you, meaning**

1     **Mr. Bernhardt, you were a consultant who was assisting**  
2     **with the effort to list on Vienna; correct?**

3             A.     That's correct.

4             Q.     And I think you described that in a previous  
5     deposition is it happened quite quickly. Is that a fair  
6     characterization?

7             A.     When you say happened quite quickly, what  
8     happened? The listing?

9             Q.     The listing. I think you said it happened in  
10    a hundred days or something.

11            A.     Yeah. I was saying it. I think it was  
12    something like, you know, 101 or 102 days, but, you  
13    know, at first, early on, we were quite proud of that,  
14    and a lot of that was Alexander Coenen's work, I think.  
15    I didn't work a lot directly with him. I'm definitely  
16    in contact with him. Because, yes, from the time of the  
17    first sort of getting involved to listing was, yes,  
18    100 days, and I do attribute that to the fact that  
19    Alexander Coenen had a great relationship with Martin  
20    Wenzl, and he was the capital market's coach, and I do  
21    remember him, you know, being basically totally hands on  
22    in the development of all the materials.

23            Q.     At the time that Euronext denied admission to  
24    the 20 million new shares, were those shares  
25    dematerialized?



1           A.    I think they had -- and this is a good  
2   question.  I feel like they had to be because to apply  
3   for listing, they should have been dematerialized, but  
4   I'm not sure.  There's an email somewhere, and I  
5   remember it from production right now, and I can't  
6   remember the date, from BankM announcing the  
7   dematerialization.  And I feel like that should have  
8   been -- that should have been the case because you  
9   can't -- unless there's something I don't understand  
10  about the Euronext, which might be the case, I think you  
11  should have your shares dematerialized by then.

12           Q.   All right.  Well, let's look at the email in  
13  front of us.  Mr. Leshem says to Mr. Colshorn, "Dear,  
14  Nicolai, as we approach the admission of AmeriMark Group  
15  AG to listing, please forward following documents  
16  attached below to BankM in order to facilitate future  
17  instructions on share transfers," and then he lists,  
18  "Number I, the complete shareholder list, and, Number  
19  II, the subscription agreements of shareholders."

20           A.    Yes.

21           Q.    And then I'm hoping you can help me with some  
22  of the next thing.  So Mr. Leshem continues.  He says,  
23  "According to Ralf Helfritsch" --

24           A.    Correct.  Good job.

25           Q.    -- "at BankM, you as the director can

1 designate that shares be sent to any account we direct."

2 Can you explain what this means?

3 A. I think what he's talking about is whether or  
4 not this goes to a custody account in Switzerland,  
5 whether or not it goes to the Austrian custody account,  
6 which is the -- I don't remember the initials. I'm  
7 going to say it in German -- OeKB, which is the  
8 equivalent of SIX SIS --

9 (Reporter clarification.)

10 A. -- which is the national securities depository  
11 in Switzerland or -- or Clearstream. I think that's  
12 what he's talking about. You can direct who it is, but  
13 honestly I'm not sure exactly what he means here.

14 Q. And then Mr. Leshem continues, "Lucie  
15 Sauerbrei of BankM wrote to you the following  
16 previously," and I gather that this is a quotation from  
17 an email from Sauerbrei. "In order to be able to submit  
18 the application to SIX SIS, we first need you to have  
19 the shareholders' list and the investors' custody  
20 account data (as already discussed, ideally as an Excel  
21 list)."

22 A. Yes.

23 Q. What application to SIX SIS is meant here?

24 A. So this is why it's weird and I think you  
25 bring up and why I was unsure. It either -- either it's

1 possible to make that application to the Euronext  
2 without having your shares first dematerialized. And I  
3 wasn't involved in that process; so I don't have  
4 personal knowledge of whether that was a requirement or  
5 not. I sort of assumed it should have been, but maybe  
6 not.

7 I do know that it was definitely a  
8 prerequisite to have your shares admitted to trading on  
9 the Vienna. That was definitely -- and I actually had  
10 conversations with SIX SIS about this. So what's  
11 happening here apparently is you say -- or maybe they --  
12 maybe because -- now I'm speculating. Maybe they get --  
13 I don't know how you would rematerialize shares. So I  
14 don't know.

15 But saying in order to submit the application  
16 to SIX SIS, first, we need you to have the shareholders'  
17 list. The application to SIX SIS really sounds to me  
18 like the application to have the shares dematerialized,  
19 put into custody at SIX SIS, and then delivered to  
20 whichever account they tell BankM to deliver it to for  
21 the master custody account, be that in Austria or  
22 whatever.

23 These are pretty technical details I think I'm  
24 getting right, but I just want to be clear that some of  
25 these things are a little out of my purview.

1 Q. I understand the uncertainty.

2 A. Okay.

3 Q. If you look at the third to last paragraph on  
4 this page. It begins with "As soon as we" -- do you see  
5 where I mean?

6 A. I do.

7 Q. "As soon as we, a paying agent, have submitted  
8 the application for the shares to the collective  
9 custody, SIX SIS will contact you in the next step  
10 regarding your consent to custody of the shares without  
11 a physical global certificate."

12 A. Right.

13 Q. That sounds consistent with what you just  
14 described that this is an application to dematerialize  
15 the shares, yes?

16 A. I would agree with that. Yeah. And the next  
17 sentence makes it clear.

18 Q. Yeah. "Subsequently, we will receive the  
19 shares credited by SIX SIS and begin to transfer them to  
20 your shareholders."

21 A. Correct.

22 Q. And if we look above in the same email, it  
23 looks like BankM needs some information. Bank, account  
24 holder, account number, bank code, number of shares,  
25 contact of the bank for transfers outside of Germany.

1 Do you see that?

2 A. I do.

3 Q. Do you know when that information was  
4 provided?

5 A. I don't exactly. I don't exactly know when it  
6 was provided.

7 Q. There were two attachments to this email.  
8 You'll see that the first attachment is a set of  
9 subscription forms. Do you see where I mean?

10 A. I do.

11 Q. And the last subscription form in this set,  
12 Bates 4653, it's the second to last physical sheet of  
13 the exhibit --

14 A. Yes.

15 Q. -- is from Mr. Markosian, and you see that it  
16 has the 644-1655 share count. Do you see that?

17 A. I do.

18 Q. And that's -- that's the wrong number;  
19 correct?

20 A. Yes.

21 Q. That we've established?

22 A. Wait a minute. What do you mean the wrong  
23 number? In terms of the subscription, yes, this is the  
24 wrong number.

25 Q. Okay. And do you know why Mr. Leshem would

1 have been forwarding these subscription forms to Nicolai  
2 to tell him to give them to the bank?

3 A. I don't, other than it was in a file  
4 somewhere, and he took them all and sent them on. I  
5 don't. I wasn't involved in this email one way or the  
6 other.

7 Q. I mean, you seem like a naturally curious  
8 person. I'm not trying to flatter you, but you like to  
9 get to the bottom of things. You seem not to have any  
10 interest to get to the bottom of this. Why is that?

11 A. Well, I don't think that's true at all. Just  
12 in this particular case, I hadn't caught what  
13 subscription of grievance had been sent. And also, I  
14 wasn't copied on this email. Certainly it's in the  
15 company files. I see it was produced by us, but I  
16 didn't catch the nuance on this at all.

17 Q. The last physical sheet of the document Bates  
18 4654 is the January 18, 2019, share I've just read that  
19 we've now discussed a number of times; is that right?

20 A. It is. And I'm glad I remember now it's the  
21 18th, not the 19th of January. Thank you.

22 Q. And the -- the share number on this share  
23 register for Mr. Markosian matches the share number on  
24 the subscription form attached to this email; correct?

25 A. It does.

1           Q.    This is the first time I see this assigned  
2   version of the share register in plaintiff's production.  
3   Although I may be overlooking something. Are you aware  
4   today of an earlier one, meaning it was attached to an  
5   earlier communication than this?

6           A.    Well, as I said, it was in the first quarter  
7   2019 binder, the physical version. So I don't have any  
8   reason to believe that it wasn't in there in January.

9           Q.    Got it. When was AmeriMark Automotive  
10  created?

11          A.    AmeriMark Automotive was created on June 6th,  
12  2016.

13          Q.    And I'm sorry. Was it renamed as of that  
14  date, or did it exist previously?

15          A.    Well, there was a show company that was bought  
16  called Bernard & Nef. It was renamed, but in the Swiss  
17  structure, it is a new existing company. It's --  
18  literally the German word for it is rebirth.

19          Q.    Got it.

20          A.    But, yes, it was -- in the common law  
21  jurisdiction sense, yes. It was converted from a shell  
22  company or a shelf company depending.

23          Q.    And as of the moment of its creation or  
24  rebirth, did it have any assets?

25          A.    In theory, it had Rymark Inc.

1           Q.     So that all happened contemporaneously, and  
2     when I say "that all," I mean the contribution of Rymark  
3     shares into AmeriMark Automotive happened commensurate  
4     with its rebirth?

5           A.     Well, no. To be more accurate about it, there  
6     was a series of steps. I can describe them for you.

7           Q.     Sure.

8           A.     So I'm just -- Bernard & Nef -- I'm just going  
9     to call it the original company because I hate that  
10    name. The original company was a limited liability  
11    company with a share capital of 20,000 francs, which is  
12    the minimum share capital for a minimum liability  
13    company in Switzerland. I don't recall off the top of  
14    my head what established that share capital, but  
15    certainly there would have been some nominal assets in  
16    there, perhaps a bank account with some hundred francs  
17    or something. There would have been something on the  
18    books because if it was zero, you'd have to kind of  
19    strike the company off. So the directors probably  
20    maintained something.

21                The papers of Bernard & Nef are actually in  
22    the AmeriMark file. I didn't look at them all that  
23    closely for here. There's actually a reference to it in  
24    the -- I'm pointing to your thing, but a reference in  
25    the corporate bible, the registry bible that I bought.



1 There's a reference to it and shows it stricken off the  
2 record. So there would have been some assets there  
3 lingering.

4 Those assets were marked at 20,000 francs, and  
5 then the Rymark contribution valued at 880,000 francs  
6 combined with the 20,000 francs to make 900,000 francs  
7 of share capital. That would be the share capital. As  
8 to the exact value of the assets that varies, of course,  
9 the book value of the assets.

10 So, yes, there would have been some lingering  
11 assets there first. The first step was Bernard & Nef  
12 had injected into it Rymark, and Mr. Markosian in  
13 Switzerland then took possession of one unit. Of  
14 course, the same as here, limited liability companies  
15 don't have shares. They have units. It was one single  
16 unit.

17 Then -- and I'm doing this from memory, but  
18 you have the original file, which I could walk you  
19 through probably with more detail, but that might be  
20 beyond the purview of your question.

21 Then the one unit Mr. Markosian has he then  
22 converts in a straight conversion when they change  
23 AmeriMark Bernard & Nef into AmeriMark Automotive into  
24 18 million registered shares. So it's that kind of a  
25 steppingstone.

1 Did it -- was that responsive to your  
2 question.

3 Q. Yes.

4 A. Okay.

5 Q. Who were the directors on Bernard & Nef on  
6 June 5th of 2016?

7 A. It's a good question. That will be in the  
8 commercial registry entry. I don't have it memorized.  
9 I think there were one or two. And that entry, also, I  
10 have the history of the directors. I think that company  
11 had been around for quite some time.

12 Q. And did those directors remain directors of  
13 the new company?

14 A. I don't believe so. I think initially  
15 Mr. Markosian's lawyers, either Thier or Zadner [ph],  
16 joined as the first director. And then when he came in,  
17 he became the sole director, and then Mr. Colshorn  
18 joined at a later time. That's from memory. You can  
19 see the exact progression and the dates of that in the  
20 corporate file.

21 Q. So we start with just Mr. Markosian. We add  
22 Mr. Colshorn at some time, and for a while they are  
23 codirectors; correct?

24 A. They're certainly codirectors for a time. I  
25 don't want to commit myself on who was first and what

1 order it was, but they were definitely codirectors for  
2 quite some period of time.

3 Q. And then at some point Mr. Markosian is  
4 removed as a director from AmeriMark Automotive;  
5 correct?

6 A. Removed is the wrong word, I think. He didn't  
7 stand for reelection, and he wasn't put on the ballot;  
8 and, therefore, he wasn't reelected.

9 Q. And when did that happen?

10 A. From my memory, August of 2020.

11 Q. All right. And between June 6th, 2016, and  
12 what I'll call the reverse merger in 2018, who were the  
13 shareholders over at Amerimark Automotive?

14 A. Well, initially, it was 18 million shares to  
15 Mr. Markosian, and then Mr. Markosian, on June 17th,  
16 2016, signs the initial shareholder list which creates a  
17 total of 19 shareholders -- Markosian plus friends,  
18 family members, and Friends & Equity, the German  
19 company. That carries on until the next transaction.

20 I should point out this is -- I think this is  
21 important. All these transactions are actually not done  
22 by the shareholders themselves but are done by the  
23 shareholders' lawyers in Switzerland signing documents  
24 on behalf of the shareholders from power of attorney. I  
25 think from the securities law perspective, it's

1 important to understand that all these transactions  
2 happened in Switzerland.

3 But anyway -- so the 19 shareholders exist  
4 until -- and I believe -- I'm going from memory here --  
5 I believe the next transaction is Mr. Markosian's  
6 transaction with Whitetree, which brings Whitetree in,  
7 and then that's before the merger. That's January 2019,  
8 and the reverse merger, of course, is May -- no. I'm  
9 sorry. Wait just a second. I'm not sure I have the  
10 dates right.

11 Q. You said January 2019. I don't think that's  
12 right.

13 A. No. I have that wrong. I'd really like to  
14 look at the ledger but --

15 Q. It's all right. I'm not going to hold you to  
16 the dates. You're speaking from memory.

17 A. So do you want to -- ask me the question  
18 again. Let me see if I can redo --

19 Q. Yeah. I think the question was who were the  
20 shareholders of AmeriMark Automotive between its  
21 creation in 2016 and the reverse merger in 2018? And I  
22 think you've answered that question.

23 A. Yeah, I think I got that right.

24 Q. And then as of 2018, when the reverse merger  
25 happened --

1 A. May 2018, right. That helps me.

2 Q. The list of shareholders expanded to include  
3 all of whom we'll call the legacy shareholders of  
4 4Service Cloud Tech.

5 A. Thank you. You're referring to the bearer  
6 shareholders?

7 Q. Right.

8 A. Right. So point taken. The issue with the  
9 bearer shareholders is that --

10 (Reporter clarification.)

11 A. Up until the reverse merger, that's right.  
12 It's the 19 shareholders. Then we have the reverse  
13 merger in the middle of 2018. And now I was thinking  
14 only of the registered shares, but, now, yes, you  
15 inherit the bearer shareholders of the company of  
16 4Service Cloud, right.

17 Q. (BY MR. RICHARDS) But -- and not to be  
18 pedantic, but as of the reverse merger, my understanding  
19 is that your testimony is that AmeriMark Automotive's  
20 shareholder became AmeriMark Group?

21 A. Automotive. Yes, correct. It became the  
22 100 percent subsidiary of the Amerimark Group, as of the  
23 reverse merger. I was mixing Group and Automotive up.  
24 I'm sorry, Counselor. It's been a long day.

25 Q. I want to make sure we were straight on that.

1 A. I think we are.

2 Q. And then Group had the shareholders you just  
3 described.

4 A. Yes.

5 Q. The bearer shareholders and then the  
6 registered shareholders?

7 A. Correct.

8 Q. And at the time of the reverse merger,  
9 Mr. Colshorn was made the director of Group; correct?

10 A. I'd have to look at it, but I think that's  
11 correct.

12 Q. And subsequently Mr. Heeg was made a director  
13 of both Automotive and Group, yes?

14 A. In different steps, yes.

15 Q. And he remains a director of both Automotive  
16 and Group, yes?

17 A. As of today, yes, that is correct. There's a  
18 nuance in there. There was a period when AmeriMark  
19 Group's board was actually disabled legally. So when we  
20 say he was a director, there was a period in time when  
21 nobody actually had directorial powers in Group -- at  
22 least very limited directorial powers because the  
23 company hadn't held annual meetings often enough. So  
24 there were issues there.

25 Q. I'm going to mark Exhibit D 116.

1 (Exhibit D 116 was marked.)

2 Q. (BY MR. RICHARDS) Mr. Markosian [sic], I've  
3 marked as Exhibit --

4 A. I'm not Mr. Markosian. I'm sorry. It's been  
5 a long day for you too, Counselor. Mr. Bernhardt, yes.  
6 Hello.

7 Q. Mr. Bernhardt, I have marked for you as  
8 Exhibit D 116 a pleading in this case which is titled  
9 "Declaration of Sara E. Diamond in Support of AmeriMark  
10 Group AG's Motion to Dismiss for Insufficient Service  
11 Pursuant to Rule 12(b)(5) of the Federal Rules of Civil  
12 Procedure."

13 Do you see that?

14 A. I do, and I'm familiar with this document.

15 Q. Okay. So let's look at page 3 of the  
16 document. I'm looking at paragraph 7 of Ms. Diamond's  
17 declaration.

18 A. Yes.

19 Q. She says, "Mr. Heeg is chairman of the board  
20 for plaintiff AmeriMark Automotive AG. He has no role  
21 of AmeriMark Group, and, therefore, is not authorized to  
22 accept service on its behalf."

23 I was surprised when I read this. Is it true  
24 that Mr. Heeg has no role in AmeriMark Group?

25 A. Well, I think what was meant here-- that's not

1 correct. What was meant here is that, unfortunately,  
2 this was the period when the board had -- I don't know  
3 how to explain it in English -- a disability. So, in  
4 fact, the board was not able to act on behalf of the  
5 company for a long period of time, and this was within  
6 that period.

7 **Q. When you say --**

8 A. It's not true -- I'm sorry to have to say that  
9 it is not true that he had no role in AmeriMark Group at  
10 the time. He was sort of a board member in suspension.  
11 I don't know how to describe it. There's a German word  
12 that I can't remember but --

13 **Q. When was that period?**

14 A. I'd have to remember this also. I'd have to  
15 go back and look at the books, but the problem was that  
16 the board, under a ruling in Switzerland, after a period  
17 of time of not being able to finish the financials --  
18 unfortunately, the reason for that is because of your  
19 client, Mr. Markosian -- the board's powers are  
20 suspended until the issue is cured.

21 So at this period of time, I don't remember  
22 exactly the span on that, but I do remember at this  
23 period of time that that was the case, that the board  
24 was, in effect, powerless.

25 **Q. And I still don't quite understand what you**



1 mean when you say "this period of time." What period of  
2 time do you believe is relevant here?

3 A. Well, I remember talking about this pleading,  
4 and I remember talking to Mr. Heeg, and there was some  
5 conversations with counsel that I can't discuss that led  
6 into this pleading.

7 Q. Got it. Okay. The disability you  
8 described -- was that in 2024?

9 A. I remember it being in this period because  
10 when we discussed this issue and I discussed with  
11 Mr. Heeg, we thought that that's what the period was.  
12 That's my memory of it. But I'm going completely from  
13 memory here, and I don't have -- I mean this is an  
14 AmeriMark Group issue. I didn't study the AmeriMark  
15 Group papers on this issue for this deposition.

16 Q. Is AmeriMark Automotive --

17 A. One -- I'm sorry.

18 Q. No. Keep going.

19 A. One other thing that went into this memo in  
20 Switzerland, and in general, directors are simply not  
21 empowered to accept service on behalf of the Swiss  
22 company. It's illegal. That definitely was part of the  
23 discussion I had with Mr. Heeg on this point. It's  
24 literally not possible under Swiss law. Directors are  
25 not authorized to do that.

1           **Q.   AmeriMark Automotive is a Swiss corporation;**  
2       **correct?**

3           A.    It is.

4           **Q.   And it's subject to Swiss corporate governance**  
5       **laws?**

6           A.    When you say governance laws, I want to have  
7       some distinction there, but it certainly is subject to  
8       Swiss law. I assume that encompasses the governance  
9       laws that you're talking about.

10          **Q.   Are there Swiss governance regulations that**  
11       **you think of as distinct from laws?**

12          A.    Well, I'm not a practitioner in Switzerland,  
13       but certainly there is body of regulation. The Code of  
14       Obligations is sort of a commercial law. There are  
15       definitely regulations that are involved, sure.

16          **Q.   So AmeriMark Automotive is subject to the**  
17       **Swiss Code of Obligations; correct?**

18          A.    Absolutely.

19          **Q.   What does it do to ensure compliance with the**  
20       **Swiss Code of Obligations?**

21          A.    Well, it has counsel, and I assume that the  
22       board of directors has discussions with counsel on  
23       regulatory issues that come up, and it takes advice and  
24       acts accordingly.

25          **Q.   Are there particular corporate governance**

1 guidelines, like sort of best practices, that are  
2 written down somewhere that AmeriMark Automotive  
3 follows?

4 A. Not particularly. Smaller Swiss companies  
5 don't really have that kind of infrastructure, and in  
6 Switzerland, the small and medium enterprise, SME,  
7 infrastructure is very light. There's a very strong  
8 entrepreneurial culture in Switzerland. So I think  
9 there's probably, you know, a set of guidelines that are  
10 nonbinding. But, again, I'm not a practitioner. So --  
11 definitely the case that some companies that get large  
12 enough or, you know, are listed or otherwise regulated  
13 or unregulated industries would have a long set of  
14 regulations.

15 I can -- you know, I can add to my testimony.  
16 Certainly the basic, like, anti-money regulations,  
17 anti-money laundering regulations -- I think most of  
18 those are statutory, but certainly those exist.  
19 Certainly compliance laws exist. Directors also -- I  
20 don't think this is what you meant, but it definitely  
21 plays into the regulations. Directors also will be  
22 members of self-regulatory agencies or self-regulatory  
23 organizations, SROs.

24 PolyReg is a large SRO, and I know for a fact  
25 that directors are members of those. I know Mr. Staeger

1 was a member of an SRO. I know Mr. Spillmann was a  
2 member of SRO. It's not always mandatory, but it's  
3 definitely something that most directors do, and that  
4 has certainly a set of codes, what to expect, and the  
5 Polyreg SRO, for example, will do periodic anti-money  
6 laundering compliance audits. We'll do -- you know,  
7 check to see that all the KYC for various customers are  
8 filed, et cetera. I know that Mr. Colshorn has gone  
9 through that because he was at PolyReg, and I know that  
10 Mr. Staeger has gone through that.

11 So I think that might be responsive to your  
12 regulation question in trying to define the sphere of  
13 regulations that the directors in the company are  
14 subject to; is that right?

15 Q. Yeah.

16 A. Okay.

17 Q. I'm not familiar with SROs. Is that, like, a  
18 state bar organization sort of in that it sets rules for  
19 practitioners that you're expected to follow?

20 A. It's not a bad analogy. Is the state bar a  
21 governmental agency?

22 Q. Yeah, yeah. At the state level, yes.

23 A. Then I would say instead it would be more like  
24 the ABA or a chapter of the ABA. They're  
25 nongovernmental. They're private organizations. That's

1     why its called self-regulatory organization rather than  
2     a regulatory umbrella over from the government -- SRO.  
3     The concept exists also here in -- I'm sorry -- here in  
4     the United States.

5           **Q.     Okay. Let's talk anti-money laundering, AML,**  
6     **regulations. What does AmeriMark Automotive do to make**  
7     **sure it complies with those?**

8           A.     Well, the directors, especially under the  
9     auspices of the SROs that they're members of, go through  
10    periodic audits. Mr. Colshorn, for example, has  
11    periodically gone through and asked for updates of KYC.  
12    He's required to go through his files to make sure they  
13    are current. To the extent they're not current, he's to  
14    seek to correct that.

15                He's required to update any question about,  
16    for example, source of funds for any funds that are  
17    coming in. If there's over a substantial amount -- I  
18    think that number is 50,000 francs, 400,000 francs in  
19    Switzerland. That's just from my memory. All of these  
20    things have to be done. A lot of it is about KYC  
21    recordkeeping. For small companies in particular, this  
22    is really the only thing that goes on that's really  
23    onerous -- onerous is the wrong word -- that requires  
24    work.

25           **Q.     And KYC stands for "know your customer"**

1     **base --**

2           A.     It does. I'm sorry.

3           **Q.     -- in this context?**

4           A.     Know your customer, KYC.

5           **Q.     And KYC obligations for AmeriMark Automotive**  
6     **in particular would involve AmeriMark tracing its**  
7     **ownership down to the final UBOs at the AmeriMark Group**  
8     **level; is that correct?**

9           A.     For certain -- certain thresholds, yes. At  
10    the top of my head, I don't know what those are.  
11    There's common thresholds in compliance. I'm not sure  
12    when it comes to the anti-money laundering  
13    self-regulatory guidelines, what those would be. But  
14    the common ones tend to be something like 10 percent, 25  
15    percent, 50 percent plus 1, 75 percent, 90. I don't  
16    know how tiered that is, but definitely there is the  
17    idea that you should be able to identify, for particular  
18    classes of shareholders, who the ultimate beneficial  
19    owner is.

20                 There's lots of exceptions. For example, if  
21    you have an entity over a certain threshold number of  
22    shareholders -- I don't know what number that is -- 5,  
23    6, 7, 8 -- or no shareholder owns more than "X,"  
24    20 percent, then you sort of don't have to do the look  
25    down.

1           The same thing is true of companies that have  
2   their shares admitted to trading. For instance, for  
3   shares that are held -- and here I'm going to have to  
4   translate the Swiss word by intermediaries or -- I have  
5   it -- intermediated shares. For example, if the shares  
6   are dematerialized, you have a far lower burden on those  
7   because those are intermediated. There's a custody.  
8   They're held somewhere, and that means that a lot of  
9   that KYC or a lot of the regulatory piece goes there,  
10   right, is on that side.

11           So it's -- it's complicated, but for a small  
12   company, not difficult.

13           **Q. Is the UBO of -- well, Philomaxcap holds**  
14   **13 million shares of AmeriMark Group; correct?**

15           A. It does.

16           **Q. And Capana holds more than 90 percent of**  
17   **Philomaxcap?**

18           A. About 92 percent.

19           **Q. And your Capana's UBO; correct?**

20           A. Am I Capana's UBO? Yes, I am.

21           **Q. So by extension, does AmeriMark Automotive --**  
22   **is it required to keep KYC information for you on it**  
23   **files?**

24           A. It does.

25           **Q. You're over that threshold? What about**

1     **Mr. Markosian?**

2             A.     Yes. And, unfortunately, that's lapsed.

3             **Q.     What about Mr. Nolay [ph]?**

4             A.     Mr. Nolay [ph], I don't know. I don't know  
5     that Mr. Nolay [ph] -- in fact, I think he is not in the  
6     current shareholder list, the last one that I looked at.

7             **Q.     The one that you just worked on with Mr. Heeg?**

8             A.     It's not finalized yet, but yeah.

9                     Also -- let me stop you for a second. It's  
10    important to understand the KYC requirements and also  
11    the consequences of not doing requirements. So if the  
12    board of directors or the director or whoever is the  
13    compliance officer for the company is required to do  
14    that, but he's not required to have complete KYC files.  
15    He's required to attempt to obtain them.

16                    If he can't obtain them, the consequences for  
17    shareholders are simple. They have no voting rights.  
18    They cannot vote. They cannot receive dividends; right?  
19    And they're not allowed to even attend the meetings.  
20    They're not allowed to register themselves until they  
21    cure the defect.

22                    So -- and that's less an anti-money laundering  
23    thing than it is -- than it is sort of ensuring that the  
24    right people are appearing at shareholder meetings. So  
25    I don't want to leave the impression that there's a KYC



1 regulation that will smack a director if they don't have  
2 current KYC files. They're required to diligently keep  
3 them to the extent that they are able and to be able to  
4 show that they do that.

5 Q. And I think you just testified that  
6 Mr. Markosian's KYC information on file with AmeriMark  
7 Automotive has lapsed; is that correct?

8 A. It has.

9 Q. And what that means, I think, from what you  
10 just told me, is that Mr. Markosian can't receive  
11 dividends from AmeriMark Group?

12 A. Correct.

13 Q. Although I don't believe AmeriMark Group has  
14 ever paid any dividends; is that correct?

15 A. I don't know that it -- I don't think that it  
16 has. I'm totally unaware of any dividends. I would be  
17 shocked to learn that it had.

18 Q. But Mr. Markosian also couldn't register to  
19 appear at a shareholder meeting or vote at such meeting;  
20 is that right?

21 A. He's not supposed to participate. I might  
22 have misspoke there. He's not supposed to participate  
23 in the meeting. There actually are some other people  
24 that can attend the shareholder meeting. He's not  
25 allowed to participate, to vote at the meeting.

1           **Q.     Got it.**

2           A.     What I meant to really say, to totally  
3 clarify, he's not allowed to register as a shareholder  
4 at the meeting. He's allowed to appear at the meeting.

5           **Q.     Swiss law or regulations -- and you can tell**  
6 **me which it is -- require Swiss corporations to have**  
7 **annual general meetings; correct?**

8           A.     Swiss law does not. Swiss regulations do not.  
9 There is a court case -- and this is very recent. It is  
10 a court case -- there's a guideline -- let me start  
11 over.

12                   Swiss law include a code of obligations, and  
13 I'm not a practitioner. I'm doing this from memory, but  
14 I'm pretty close, I think. There's a guideline that  
15 says annual meetings must be completed by June 30 of  
16 the -- including the financials by June 30 of the prior  
17 year. This is a guideline.

18                   For a long time in many Swiss companies,  
19 they're still in a situation -- and it's not enforced,  
20 there's no penalty, even though it's delineated -- and  
21 this is, again, from my memory, in the code of  
22 obligations, which is essentially the commercial law of  
23 Switzerland. Its statute. It was, for a long period of  
24 time, not enforced -- or there was no enforcement clause  
25 for it. It wasn't a self-enforcing clause. So many

1 companies, to this day, even large companies, lapse all  
2 the time.

3           There was a court case -- I was about to say  
4 something about the judge, but I'm not going to. There  
5 was a court case which found, recently, that the moment  
6 that that -- that point lapsed, the board became  
7 ineffectual. It no longer has power. It's supposed to  
8 be to incentivize directors to, you know, be more  
9 prompt, and it caused a lot of problems in Switzerland  
10 because nobody was doing it, really, on time. And the  
11 problem is that under Swiss law -- this is Swiss law --  
12 it is the board of directors that calls the annual  
13 meeting. So if the board of directors is powerless and  
14 you need an annual meeting to become compliant -- I know  
15 I'm getting into the weeds, but this is exactly the  
16 situation that AmeriMark Group found itself in that I  
17 was referring to earlier. So that's what we're talking  
18 about.

19           **Q. So I want to differentiate between a**  
20 **requirement the company have an annual general meeting**  
21 **and the requirement that they have it by a particular**  
22 **date. Are those separate requirements in Swiss law?**

23           A. I don't know the answer to that one exactly.  
24 I know the -- I know the -- the guideline that you're  
25 supposed to have by a particular date and I -- you know,

1 everyone knows that you're supposed to have annual  
2 meetings. I don't know that I can articulate the exact  
3 statutory structure that defines it, but I can tell you  
4 it's not a strict obligation because for years  
5 and years, many, many companies were not compliant.

6 **Q. What has to happen at an annual general**  
7 **meeting for it to count as an annual general meeting?**

8 A. Well, I don't know that I'm perfectly able to  
9 do that. I'd want to talk to counsel to really tell me,  
10 but I can give you my best estimation. In theory,  
11 you're supposed to have the financials report by the  
12 board and potentially any other agenda items pass the  
13 meeting, and sometimes they're incredibly simple.  
14 Sometimes it's enough to say, "These are the financials.  
15 We passed. There are no other items," and that's it. I  
16 might be understating the case a little bit. I'm not a  
17 practitioner, but I've certainly been in meetings.

18 And, for example, many meetings of AmeriMark  
19 Automotive have been incredibly simple and don't even  
20 require a physical meeting. This is because, as we  
21 talked about in another context in some of this  
22 testimony, in Switzerland, if you have you 100 percent  
23 shareholding, you can do a circular meeting. 100  
24 percent shareholder says, "Here's the meeting. Here are  
25 the minutes. Finished. Done." No physical meeting.

1 Nothing else. It's over. In fact, Mr. Markosian held  
2 one such meeting for AmeriMark Automotive in the very,  
3 very beginning, a universal circular meeting.

4 So the requirements are actually quite light.  
5 I will add because it's -- it's important to the context  
6 here. Because AmeriMark Group couldn't hold annual  
7 meetings for a long period of time and you're supposed  
8 to send the shareholder approved financials to the tax  
9 authority, AmeriMark Group spoke at the tax authority --  
10 I think this is Nicole Kuster's conversation -- I don't  
11 remember exactly who it was -- and they pointed out  
12 that, in fact, what you can do is you can submit the  
13 financials with a note that say, "Not approved by  
14 shareholders," which you have to do if you can't hold  
15 the meeting. And sometimes there are companies that  
16 just have an administrative issue and they can't.

17 So AmeriMark Group has done that for some  
18 years, two or three years, in order to get over the fact  
19 that they're unable to have annual meetings.

20 **Q. So you described a universal circular**  
21 **meeting -- I think was the term that you used -- that**  
22 **Mr. Markosian held in 2016 for AmeriMark Automotive;**  
23 **correct?**

24 **A.** I think it was 2016. It might have been -- I  
25 might have to correct myself. It might have been

1 related to the reverse merger and the authorization for  
2 a reverse merger. And then I think -- I'm not sure.  
3 I'm pretty sure that that's what that was. And when I  
4 said "universal circular," I think in the United states  
5 it's called a "circular meeting," possibly, or a meeting  
6 by circulation. We just circulate the document. We're  
7 done. And I think in Switzerland it's called a  
8 "universal meeting." In other words, the whole universe  
9 of shareholders makes a decision.

10 **Q. And the predicate is that all shareholders**  
11 **need to be united or there needs to be a single**  
12 **shareholder or something else.**

13 A. If there's -- if 100 percent of shareholders  
14 are not represented, you can't just write a paper. You  
15 have to have some kind of a process to protect the  
16 shareholder that is not represented -- right -- to give  
17 them an opportunity to be heard. This is why, often,  
18 you really want to have 100 percent shareholdings. It  
19 makes corporate governance pretty easy. You don't have  
20 to hold meetings all the time or you don't have to send  
21 out invitations. No invitations have to go out when you  
22 already have 100 percent of shareholders, for instance.

23 **Q. So prior to the reverse merger in May 2018,**  
24 **AmeriMark Automotive could not have held a universal**  
25 **meeting without all 19 shareholders consenting; right?**

1           A.     That's right. It would have to be 100  
2     percent. So I think I must be referring to one of the  
3     earlier meetings. I do feel like I saw a 2016 universal  
4     meeting form Mr Markosian, but I don't remember a  
5     hundred percent for sure. I take it back. Thanks for  
6     clarifying. What I'm thinking of is the board  
7     resolution signed by Mr. Markosian for the reverse  
8     merger to authorize the company to seek to admit its  
9     shares. That's my mistake. Thank you for helping me.

10           **Q.     And he would have signed that resolution, not**  
11     **in his capacity as shareholder, but in his capacity as a**  
12     **director?**

13           A.     As a director. As a board of resolution. My  
14     mistake.

15                     (Reporter clarification.)

16           **Q.     (BY MR. RICHARDS) Do you know whether**  
17     **AmeriMark Automotive had an annual general meeting in**  
18     **2017?**

19           A.     I believe it had annual general meetings  
20     across the board. Let me think about the context of  
21     2017. By 2017, we now have 18 shareholders -- I'm  
22     sorry. 19 shareholders should be in 2017. I don't know  
23     what that record is like. I do know that that would  
24     have been handled by Nicole Kuster and Nicolai Colshorn,  
25     and I feel like they have always been on top of things.

1 On that one, I don't know 100 percent for sure. I don't  
2 know why it wouldn't have been.

3 **Q. What about 2018, same answer?**

4 A. I would give you the same answer.

5 **Q. And then beginning in 2019, AmeriMark --**

6 A. Let me stop you for just a second. 2018,  
7 2019 -- we're talking Automotive now?

8 **Q. Yes.**

9 A. I feel like I've definitely -- well, I'm not  
10 going to say definitely. I feel like I've seen 2018,  
11 2019, 2020, 2021 on for Automotive. I feel like I have.

12 **Q. Well, beginning in 2019, Automotive had a**  
13 **single shareholder; right?**

14 A. Yes, but we would have done -- definitely done  
15 universal meetings every year, because you have to pass  
16 the financials anyway eventually. So --

17 **Q. So you're not aware of AmeriMark Automotive**  
18 **missing a year in its meetings?**

19 A. I'm not aware of it, no. I think we were  
20 current. I think, also, in order to do the latest  
21 AmeriMark Group meeting, we needed to make sure all the  
22 Automotive's were current. I know for -- I know also,  
23 just to -- to close the loop on this point, one of the  
24 things -- yes. Anyway --

25 **Q. What about Group? Did Group miss any**



1 meetings?

2 A. Well, by missed, some were severely delayed  
3 until recently when we were able to cure the  
4 administrative default, and then we held -- I don't  
5 remember -- two or three sort of simultaneously or in  
6 short sequence. So as to my knowledge, AmeriMark Group  
7 is current on its annual meetings.

8 Q. And that administrative default, the  
9 suspension or whatever it was -- that was a result of a  
10 problem with the directors?

11 A. It was a result of the fact that we couldn't  
12 get consolidated financials because after  
13 September 16th, 2020, Mr. Markosian refused to provide  
14 them in any real way and wouldn't cooperate. So it  
15 wasn't enough to have the Rymark financials, the audited  
16 financials. We needed a management statement. We  
17 needed all sorts of participation, and we knew that was  
18 not forthcoming. So we couldn't hold meetings.

19 Q. And you haven't -- you being AmeriMark  
20 Group -- hasn't got any of those things since September  
21 2020; correct?

22 A. No. It required court intervention actually.  
23 (Reporter clarification.)

24 Q. And the court said basically, "Okay, you can  
25 keep holding meetings without financials"?

1           A.     "You can do this one meeting now, and then you  
2     have to cure, in that meeting, the default." That was  
3     the authorization.

4                     This was -- you know, it was done in an oral  
5     hearing. It was actually -- yeah. I was going to say  
6     something, but I'll tell you later if you're interested,  
7     just from an academic legal point of view about how it  
8     got solved. It's not relevant to the company, but I  
9     think you'd be interested in the academic part of it.

10                    But, yes, we had to literally find a very  
11    unique way to solve this problem. It was a novel  
12    problem caused by this one judge in Switzerland. It was  
13    just bizarre.

14           **Q.     2023, I think your testimony is that you**  
15    **believe AmeriMark Automotive had an annual general**  
16    **meeting, and you believe it would have been a circular**  
17    **meeting; is that correct?**

18           A.     Let me think about this again. Did AmeriMark  
19    Automotive have an annual meeting in '23, and was it a  
20    circulation meeting? I'm basically positive it did  
21    because the close of '23 is for Group, and you can't do  
22    that until you close the subsidiary and consolidate up.  
23    So I believe that that's correct.

24           **Q.     So let's set aside annual general meetings.**  
25    **There's also such thing as a special meeting; correct?**

1 A. Correct.

2 Q. How many special meetings has AmeriMark  
3 Automotive had?

4 A. Few to none. You know, special meetings with  
5 the shareholders, to do special shareholder actions, I  
6 don't -- we're talking about Automotive now?

7 Q. Mm-hmm.

8 A. I think few to none. In Switzerland, there  
9 are certain special shareholder actions, but I don't  
10 know that the company ever undertook anything that  
11 required it.

12 Q. What about in Utah in 2023? We discussed at  
13 some length yesterday Barbara McFarland at Parsons Behle  
14 acting as a nominee for a special meeting.

15 A. We did.

16 Q. Was that a special meeting of AmeriMark  
17 Automotive?

18 A. I thought that it was a board resolution, not  
19 a special meeting.

20 Q. And the difference between those two things is  
21 what?

22 A. Board resolution is called by the board, and  
23 the board votes in its own sole capacity to make a  
24 resolution. No shareholder involvement is required.

25 Well, eventually the shareholders can see that

1 the board resolution was done when they inspect the next  
2 year's papers.

3 Q. And has an annual meeting been held since the  
4 board resolution we were just discussing?

5 A. Remind me the date of that board resolution.

6 Q. I'm not sure.

7 A. Remind me the year.

8 Q. 2023.

9 A. I'm not positive on that. I don't know. So  
10 we're talking Automotive again?

11 Q. Yeah.

12 A. I don't know if the 2024's have been closed.  
13 It's only January '25. Probably not.

14 Q. I'm going to mark D 117.

15 (Exhibit D 117 was marked.)

16 A. Got it. Yes. Did we look at this yesterday?

17 Q. (BY MR. RICHARDS) We may have, and I may have  
18 remarked it. I'm actually -- I really don't think I'm  
19 remarking very much stuff today, but we may have looked  
20 at this yesterday.

21 A. It's fine. Just for my recollection.

22 Q. This is a March -- excuse me -- this is a  
23 May 9th, 2023, email from you to Nick Greenwood and  
24 Sarah Diamond with several others in CC; correct?

25 A. Correct.

1 Q. And correct me if this is wrong. I'm looking  
2 at the main email on this first page.

3 A. Mm-hmm.

4 Q. And some of the lines have little sort of  
5 sideways carrots before them. I think that's  
6 Mr. Greenwood's email, and then the lines without  
7 carrots, I think, are your interlineations. Is that  
8 your understanding?

9 A. That is my understanding.

10 Q. Mr. Greenwood begins, "Shaen, thank you for  
11 the revisions. This will work from my perspective,  
12 assuming you will have the separate certificate and  
13 indemnity as well. Could you please confirm and send me  
14 the proposed final version of that certificate and  
15 indemnity?"

16 What certificate and indemnity is meant here?

17 A. Certificate I don't -- I think -- let me read  
18 the bottom on here for a second. Just a second. What  
19 am I saying? I don't know what he means 100 percent by  
20 certificate. I'm going to speculate, and I'm going to  
21 say that he maybe wants a certificate of the board  
22 resolution.

23 Indemnity was that -- because Parsons Behle  
24 was sending their paralegal, Barbara McFarland, just in  
25 her capacity as, essentially, a notary, that she should

1 be indemnified from -- from be acting as a notary in  
2 that way. That was -- that was what the indemnification  
3 conversation was all about, and we did provide them  
4 indemnification.

5 **Q. And when you say "we," is that indemnification**  
6 **between Capana and Miss McFarland or Capana and Parsons**  
7 **Behle or someone else?**

8 A. I -- let's think about that. I think -- I  
9 don't remember who it was from exactly. It could have  
10 been from Automotive indemnifying her, which makes  
11 sense, but honestly I don't remember exactly where the  
12 indemnification came from.

13 **Q. And do you believe that the board resolution**  
14 **that came out of this process was made in or about May**  
15 **of 2023 based on this email?**

16 A. I can't remember when all of this finally came  
17 to pass, but I don't -- I don't know. I mean,  
18 obviously, it was generally in this -- this time. I  
19 can't tell if it was May. Did it go in June? I just  
20 don't know. Certainly in this time frame.

21 **Q. And it resulted in a signed resolution of a**  
22 **physical piece of paper. Yes?**

23 A. I don't know if it would have been physical or  
24 digital. Again, it was a board resolution. So let's  
25 see. At this time in 2023, was it a single director?

1 You know, you can hold a single -- you can hold the  
2 equivalent of a universal board meeting and just make a  
3 notation. I don't know the exact documentation, and  
4 even in my review, I didn't actually come across this  
5 particular document, which would be -- let me specify, a  
6 board resolution from Automotive authorizing --  
7 authorizing the -- committing the shares of Automotive  
8 of Rymark shares-- let me start for the court reporter  
9 again -- a board resolution from AmeriMark Automotive  
10 directing the voting of shares in its subsidiary Rymark.

11 Q. You respond, "I think we have approved the  
12 certificate without material edits (Sarah?). If you  
13 agree the latest draft, I'll have the directors execute  
14 that this evening."

15 That's consistent with, I think, your guess  
16 earlier that the certificate means something that  
17 enabled Ms. McFarland to hold the meeting in the first  
18 place. Does that sound right?

19 A. Or perhaps what is going to be presented to be  
20 apostille, to have an apostille sign to it. Honestly, I  
21 don't remember what that refers to. Clearly part of the  
22 process.

23 Q. All right. Let's skip down a couple of  
24 paragraphs. Do you see the one that begins, "If you  
25 would please"?

1 A. If you would --

2 Q. It's after a little carrot, three lines.

3 A. Got it.

4 Q. "If you would please send final versions of  
5 the two Word documents and let me know when you would  
6 expect to like Ms. McFarland to sign, I would appreciate  
7 it."

8 Do you know which Word documents are meant  
9 here?

10 A. I don't remember that.

11 Q. You can set that exhibit aside.

12 Was AmeriMark Automotive registered to do  
13 business in Utah at the time of this email?

14 A. Not to my knowledge.

15 Q. Do you know whether it subsequently registered  
16 to do business in Utah?

17 A. I don't believe it was.

18 Q. When did AmeriMark Automotive first become  
19 aware that Rymark had paid dividends to Mr. Markosian as  
20 you allege in the amended complaint?

21 A. I'm not sure I can put an exact date on it.  
22 Automotive -- I mean, so the mechanism for Automotive to  
23 discover it, I suppose -- you know, if I wanted to be  
24 pedantic, I would say Automotive never discovered it,  
25 but I think, naturally, Mr. Colshorn would have learned



1 of it, and at Mr. Colshorn's directorship, that  
2 certainly would have put AmeriMark Automotive in --  
3 aware of it.

4 But there was a long period when we were  
5 trying to sus out exactly what happened. You know, when  
6 were we clear that dividends should have been passed up  
7 that weren't, and this was a complicated enough issue on  
8 it, and there was enough uncertainty on it. And,  
9 frankly, Rymark's financials were so obscure on the  
10 topic that we went so far, again, as to hire Helm  
11 Advisors to advise us on that point. That's the part I  
12 remember that I have to be careful talking about because  
13 that really was sort of the attorney-client part, but we  
14 definitely spent a great deal of time trying to figure  
15 out exactly what happened.

16 The other thing was, could it have been the  
17 financials were just misstated or in error? Certainly I  
18 knew, very quickly, that there were lots of problems  
19 with the financials back and forth once the September  
20 letter came in, but did that rise to the level that we  
21 knew that they had been stolen? I think it took us  
22 quite some time to figure that out. When did AmeriMark  
23 Automotive learn of this? Well, certainly by the time  
24 we filed the litigation, we had a strong suspicion that  
25 that was going to turn out to be an issue.

1 But, for example, you know, the dividends or  
2 the distributions or however -- however they were  
3 accounted for in the Rymark financials were a bit  
4 obscure, and what you really want to do is you really  
5 want to ask the controller, "Hey, were these  
6 distributions made? When were they made? How were they  
7 made?" And, of course, we couldn't do that.

8 So when did they discover that? I mean, I  
9 don't think we really super discovered it until into  
10 this litigation. When did we know? I mean, had an  
11 inkling, yes, but no opportunity to interview the  
12 management of Rymark to say, "Hey, did you pay these  
13 dividends?"

14 I'll also note that going -- you know, looking  
15 over this issue after the fact in discovery, there are a  
16 bunch of cleanup activities about dividends that go back  
17 and forth with Vicky Small and Katz, Sapper & Miller.  
18 And I think what happened is that something about  
19 distributions or dividends was not properly done. They  
20 were apparently haphazard, and when Katz, Sapper &  
21 Miller came in, they pointed this out, and those were --  
22 so far as I know -- and I think this is one reason that  
23 Keddington & Christensen statements are -- have been  
24 restated in past in their many versions -- is because I  
25 think that issue had to -- they had to go back and

1 reclassify them.

2 I also remember seeing correspondence where it  
3 was perhaps -- instead of taking distributions,  
4 Mr. Markosian would do something like loan forgiveness  
5 or convert loans into equity. Like so I'm not sure even  
6 Rymark quite knew what it was doing with dividends or  
7 distributions. So I'm not -- to answer the question  
8 about AmeriMark Automotive, I really don't think it was  
9 until we had started seeing the discovery. Because it's  
10 one thing we see some financial statements that say "X"  
11 but you know that they are maybe unreliable, but when  
12 you go back and you see discovery talking about issue  
13 "X," then you start to realize that there were problems  
14 there. So I know that's an obtuse answer, but I don't  
15 have a better one for you.

16 Q. I'm going to mark Exhibit D 118.

17 (Exhibit D 118 was marked.)

18 Q. (BY MR. RICHARDS) Mr. Bernhardt, I've marked  
19 as Exhibit D 118 what you can see as a September 26th,  
20 2019, email from Ms. Kuster to Mr. Leshem; correct?

21 A. Correct.

22 Q. And just to make sure we're on the same,  
23 Ms. Kuster is an employee of Mr. Colshorn's firm; is  
24 that right?

25 A. Correct.

1 Q. So she addresses her email to Mr. Leshem, and  
2 Mr. Colshorn's in CC. Yes?

3 A. He is.

4 Q. And I have some questions about some of the  
5 things she says. So let's read her email.

6 "Dear, Miron. Thanks a lot for your answers!  
7 Please find attached the adopted organization chart.  
8 May we ask you for the following information: It looks  
9 like that 21 percent of bearer shares of 4Service Cloud  
10 AG are upheld by public shareholders. This cannot be...  
11 could you please check on this? Maybe also Mr. A.  
12 Coenen can help on this question?!"

13 What do you understand Ms. Kuster to be saying  
14 here?

15 A. Well, because the bearer share issue was --  
16 this is now September 2019; right? So it's after the  
17 reversed merger and the failed admissions to trade  
18 intershares, and the bearer shares, 4Service Cloud,  
19 which became AmeriMark Group, again, had been hanging  
20 around for a long time, like since 2015. So -- and I  
21 think it might have been even earlier than that. I  
22 don't actually know when they were dematerialized.

23 And then, again, we have the same issue here.  
24 When you have a share ledger -- particularly, when  
25 you're dealing with bearer shares and you have a company

1 that's been listed and delisted and had an electronic  
2 share ledger and then doesn't have an electronic share  
3 ledger, it becomes impossible to get close, and you have  
4 overcounts. And this is one of those instances where  
5 you have a shareholder list that shows a bunch of  
6 shareholders. It's not current. Somebody else buys  
7 from -- from one of the original shareholders, presents  
8 themselves to the company, and now you have an  
9 overcount.

10 I think that's what's going on here. When she  
11 says, "This cannot be," I don't know if it's because she  
12 means there are no bearer shares because the 21 is too  
13 high or 21 is too low. I don't know what she means, but  
14 certainly it's some issue, something on that issue.

15 **Q. Are you aware of overcounts in AmeriMark**  
16 **Group's shared register?**

17 A. Absolutely.

18 **Q. Can you describe that?**

19 A. Well, we talked about it earlier Mr. Nalay  
20 [ph] claiming that he has "X" and that not fitting the  
21 share ledger. That's a real clear overcount. And then  
22 we also pointed out that I haven't seen perfect evidence  
23 from Mr. Nalay [ph]. Maybe it exists. I haven't seen  
24 perfect evidence from Mr. Nalay [ph] on his  
25 shareholding. And this happens all the time to

1 companies.

2 "Hey, I'm a shareholder."

3 "Well, let me see your evidence."

4 "Well, I have this and this."

5 And this happened with great length in June  
6 and August of 2020 to AmeriMark Group. So, yes, you can  
7 have overcounts. Maybe that's the case here.

8 **Q. How did the directors of a company go about**  
9 **resolving those overcounts?**

10 A. We're doing it right now with the group;  
11 right? So what you do is you look at all the evidence  
12 that you possibly have, and you have to take the most  
13 reliable piece of evidence that you have -- the last  
14 time you knew or at least thought that this was correct  
15 and compare it against -- if there's something that's  
16 old, that gets sort of -- not discounted, but gets sort  
17 of demoted, and you have to work through all the way.

18 And, also, you can call shareholders,  
19 especially the larger shareholders that are listed,  
20 because if you got a bunch of large shareholdings that  
21 are listed and some of these people might have sold  
22 their shares, that's where the big overcounts come;  
23 right? Because then a big bunch of shares that you  
24 think belong to Bill actually belong to Ted.

25 So you can call them, but you see, the

1 shareholders have no obligation to talk to you. They  
2 have no obligation to tell the Swiss company whether  
3 they have sold or not. The buyer may or may not declare  
4 themselves. So you go through a process. It's a --  
5 what's the word I'm looking for -- reconciliation  
6 process, but in a company like this that got messy all  
7 the way back in 2018, this is part of the process,  
8 frankly, of distressed debt. Who's really a  
9 shareholder?

10 **Q. Do you call brokerages to ask how many shares**  
11 **they have?**

12 A. They would absolutely never tell you in  
13 Switzerland.

14 **Q. They're forbidden from telling you?**

15 A. Absolutely no chance.

16 **Q. It's plaintiff's position in this lawsuit that**  
17 **Mr. Markosian still owns on the order of 6 million and**  
18 **change AmeriMark Group shares; correct?**

19 A. 6,441,855, maybe something like that.

20 **Q. Where are those shares?**

21 A. Well, at the moment they're listed in the  
22 share registry, and I assume that they're still either  
23 sitting with the transfer agent, or they're in an  
24 account that Mr. Markosian has that we don't know about.

25 **Q. Is transfer agent BankM?**

1           A.     It could be BankM, or it could Volens Bank.  
2     I'd rather think it's Volens Bank.

3           **Q.     Why do you rather think it's Volens Bank?**

4           A.     Because BankM didn't really distribute any  
5     more shares after they were delivered to Volens Bank.  
6     Volens Bank essentially -- not essentially. Volens Bank  
7     took over the transfer agent role.

8           **Q.     So is it your understanding that at some point**  
9     **all 20 million new registered shares were put into**  
10    **custody at Valens Bank?**

11          A.     I'm not sure that that's true, because some  
12     shareholders may have taken their delivery and put it  
13     into their depo when BankM was the transfer agent and  
14     before Volens Bank took over. I don't know. I don't  
15     actually know.

16          **Q.     All right. Let's stay in the document we're**  
17    **on.**

18          A.     Mm-hmm.

19          **Q.     I'd like to look at the largest paragraph**  
20    **here. It's about two-thirds of the way down the page.**  
21    **There's a little tick, and then it says, "In the**  
22    **financial statement." Do you see where I mean?**

23          A.     I do.

24          **Q.     "In the financial statement December 31, 2016,**  
25    **of Rymark Inc. it is written 'Dividends to owner'**



1     \$233,992.... At the end of 2016, the owner of Rymark  
2     Inc was AmeriMark Automotive AG: I can't find an  
3     incoming dividend in its accounting?!"

4             Do you see that?

5             A. I do.

6             Q. So this is Ms. Kuster identifying the dividend  
7     issue in the financials, yes?

8             A. Finding an inconsistency, yes.

9             Q. All right. Next paragraph, "Please also have  
10    a look at page 12 of the report, related party  
11    transactions: There it is written e.g. '...owned by  
12    stockholder's wife.'"

13            A. Yes.

14            Q. "... how can this be if Rymark was owned by AA  
15    Automotive by the end of the year 2016??! Same for 2017  
16    and in 2018 it is written 'Distribution to  
17    stockholder"... is this similar to a dividend and if  
18    so -- to whom was it paid as in the books of AM  
19    Automotive there is no income."

20            A. I see.

21            Q. Same thing. She's identifying the issues  
22    we've already discussed today; correct?

23            A. She is. September 26, 2019.

24            Q. Do you know what was done to investigate these  
25    issues during this time period fall of 2019?

1           A.     Well, it was also -- this is also in the  
2     context of the Swiss tax audit. So I definitely see in  
3     production -- I'm not sure that the dividend and the --  
4     and the stockholder wife thing was -- was brought up,  
5     but it was definitely in -- in production that -- this  
6     is the period of the Swiss tax audit too. In this  
7     period, there was still conversations going on between  
8     Vicky Small and at least Miron Leshem and also, you  
9     know, I think now -- let's think about this too. Yeah,  
10    I think this is also the period when Keddington &  
11    Christensen got involved. I think Rick White even was  
12    on calls. I have is to go back and look at production,  
13    but all of this was in connection also with the Swiss  
14    tax collections.

15                So I do remember having the impression when  
16    all of that was going on that there was active dialogue  
17    with the company to the point where they were offering  
18    up, you know, their accountants to talk. I'm really  
19    sure I saw a call where Mr. Markosian addresses, you  
20    know, what AmeriMark is; right? Because, from my  
21    memory, Greg Jenkins and Gary Kennington are asking, and  
22    they ask White to come on. I think that's in this  
23    period to. This is when this all started. It's the end  
24    of 2019, beginning of 2020.

25                And so at the very least, it was discussed. I

1 thought it was a little later, this actual issue. I'm  
2 not copied on this email. I hadn't remembered it, but  
3 it definitely came up later, and eventually -- not  
4 until, again, 2020 did Mr. Colshorn start getting very  
5 upset about it and sort of talking about what the hell  
6 are the Americans, meaning Rymark, doing. But until  
7 then -- and even up until that point, you see, you know,  
8 talking about the Swiss tax audit. Nicole Kuster, I  
9 know, was getting information from --

10 (Reporter clarification.)

11 A. So there's this active dialogue going on. I  
12 don't remember this issue being this early. It clearly  
13 was at least raised, but all the way through March 2020,  
14 even April 2020, discussions are going on, talking to  
15 accountants, KSM is involved. I never talked directly  
16 to KSM, but certainly Vicky was relaying the Swiss tax  
17 audit thing, and that was coming -- that was Nicole  
18 Kuster's concerns coming along.

19 And I do remember when Colshorn got upset and  
20 a little bit upset with me even. You know, what are  
21 they doing? That's now -- these issues still not  
22 resolved, but at least dialogue happening until March,  
23 April, May of 2020.

24 Q. I asked you earlier whether Group ever paid  
25 dividends, and you said no. Automotive also never paid

1     **any dividends; correct?**

2             A.     I'm not aware of any, and I would be surprised  
3     to find that they had.

4             **Q.     What taxes does AmeriMark Automotive have to**  
5     **pay?**

6             A.     Well, every time you do a capital increase, or  
7     something along those lines, there's a stamp duty, stamp  
8     tax. In addition to that, there can be -- and I'm not a  
9     tax expert, but there can be a ongoing tax on the  
10    capital of the company; right? And AmeriMark  
11    Automotive's capital is quite high, you know, in  
12    Switzerland, and this was also part of the tax audit.  
13    Okay? You've got 900,000, but you got AmeriMark  
14    Properties -- of course, except, we don't because  
15    AmeriMark Properties was never in part of AmeriMark.  
16    Show us that you haven't substantially overstated or  
17    understated, and that will become a tax too.

18            And I think, actually, Automotive still has  
19    some taxes that we deferred that are going to come due.  
20    I haven't looked most carefully at that, not for this  
21    deposition anyway.

22            But definitely there's those taxes, and then  
23    there's a tax on salary paid to directors. There's  
24    withholding salary paid to directors very much in the  
25    social security sense of things. I don't know if it's

1 directly a tax. I consider it a tax. But there's  
2 definitely those ongoing obligations. Even in a small  
3 company like that you have to pay those.

4 Was that responsive to your question?

5 Q. It was. Thank you.

6 A. You're welcome.

7 Q. What requirements do Swiss law or regulations  
8 or guidelines impose on companies with respect to  
9 document retention?

10 A. Well, I'm not a practitioner here, but it's  
11 pretty light, unless we're talking about regulatory  
12 documents -- is my understanding. So, for example, tax  
13 files, et cetera, I think, have -- I don't want to  
14 guess -- some number year of retention, but for general  
15 business records, unless they're pertaining to something  
16 dramatic, I'm not aware of anything specific.

17 That's totally different, of course, if you're  
18 a licensed entity. Licensed by, you know, FINMA, which  
19 is basically the fed of Switzerland, and then they're  
20 extremely onerous.

21 Also, I think there are some requirements with  
22 respect to how long you keep KYC documentation. That's  
23 more requirement on the board and on the directors  
24 individually, I think. And in addition to that -- I  
25 mean, it depends. If you're in a particular medical

1 industry or something like that, there's probably more  
2 accelerated document retention, but for the most part,  
3 especially for small or medium enterprises, I think it's  
4 fairly benign.

5 Again, I'm not a practitioner, but that's my  
6 understanding.

7 MR. WORDEN: Stephen, I need to take five.

8 (Recess taken from 12:04 to 12:12.)

9 Q. (BY MR. RICHARDS) Mr. Bernhardt, does  
10 AmeriMark Automotive have a phone number?

11 A. I don't believe it does anymore.

12 Q. Did it once?

13 A. Automotive -- I don't know that for sure.

14 Q. Does it have an office?

15 A. Yes.

16 Q. Where?

17 A. I'd have to look at the personal register  
18 because the domicile was recently changed, but that's  
19 listed in the commercial registry, commercial registered  
20 document. You can find it in the web. It's in Canton  
21 Zug for sure. I can't remember what the exact address  
22 was.

23 Q. And I'm not going to describe this well, but  
24 is it one of those places where a bunch of corporations  
25 are headquartered in a single location?

1           A.    I think it is in a dome -- what we call a  
2   domicile office with multiple corporations.  It's not  
3   the sole offices of Automotive.  Remembering that  
4   Automotive, you know, has really, essentially, just been  
5   a holding company since 2018.  So yes.  I believe the  
6   offices are the same as Group at the moment.

7           **Q.    When Mr. Colshorn was a director of**  
8   **Automotive, was Automotive located at his offices?**

9           A.    Well, it was in -- I think that was a  
10   Steinhausen 74 in Zug.  Do you need me to spell that?

11                               (Reporter clarification.)

12           A.    That is Mr. Colshorn's offices or was the  
13   offices of Econ commercial company, and, you know,  
14   that's a more substantial office.  I wouldn't call that  
15   a purely domicile office.  Conference rooms, there's  
16   separate suites.  I would call that more, like, shared  
17   offices.

18           **Q.    Meaning Econ shares it with other companies?**

19           A.    No.  Meaning Econ owns it or holds it -- is  
20   the sole tenant, and then sublets to its companies that  
21   are domiciled there.

22           **Q.    For which Econ performs some sort of services?**

23           A.    At the time, yes.

24           **Q.    Does Automotive have a bank account?**

25           A.    It does anymore.  The last bank account I'm

1 aware of would have been Bendura Bank. Well, let me  
2 stop you -- I'm going to stop myself.

3 AmeriMark Automotive shares are still  
4 dematerialized. So -- and those are held, I believe,  
5 still at BankM, and I think there is, actually, a  
6 current account attached to that, but it hasn't been  
7 used for some period of time.

8 **Q. When were Automotive's shares dematerialized?**

9 A. Pretty much immediately, and as I mentioned, I  
10 think, yesterday, in my last deposition back in  
11 September, I had that wrong. I hadn't realized that  
12 Automotive's shares had been dematerialized, but, in  
13 fact, pretty much right after creation, the BankM  
14 relationship was started.

15 One of the things that triggered me  
16 understanding that is the physical document I brought  
17 Mr. Markosian signing the payment -- the payment agent  
18 application, which was all the back in June of 2016. So  
19 relatively soon after the creation of the company.

20 So technically speaking, to answer your  
21 original question, Automotive does have bank account.

22 **Q. How often does Automotive's board meet?**

23 A. I'm not sure that they have regular board  
24 meetings. Automotive, again, doesn't have that many  
25 activities. Certainly annual meetings.



1           Q.    You described earlier today a Swiss tax audit.  
2   My understanding of your testimony is that that tax  
3   audit was into Group as opposed to Automotive; is that  
4   correct?

5           A.    I don't think it's technically correct because  
6   the issues were, for example, what was the size -- I  
7   think it was both companies eventually. How that  
8   progressed, when which, I don't remember. But I'll tell  
9   you what the issues were which suggest to me that it was  
10   both Automotive and Group.

11                Number one, the value of the contribution of  
12   Rymark into Automotive which necessarily entails an  
13   exploration into Automotive. And, two, the reverse  
14   merger of Automotive into Group, which necessarily  
15   entails Automotive and Group.

16                You know, in Switzerland -- here in the U.S.  
17   you know, calling a tax audit is a -- is a particular  
18   thing. One is a target of a tax audit. Switzerland,  
19   the tax authorities are much different. It's an  
20   examination. It's cordial. A lot of it is done by  
21   phone and in person. It's just a much more  
22   collaborative process. So there might be -- my point --  
23   describing that being, there might be a blurring of the  
24   lines into exactly what's going on. But, certainly,  
25   both of companies were referred to in the tax

1 examination that was done.

2 Q. Setting aside that tax examination, are you  
3 aware of any other regulatory investigations into  
4 Automotive?

5 A. I want to be careful about defining regulatory  
6 investigation. So let me give you an example. Did you  
7 fail to pay your -- this is Switzerland; right? So  
8 there's some, you know, sort of all these quasi  
9 government-regulating things. Did you fail to pay your  
10 local fire bureau? Then the fire people might come over  
11 and do an inspection because you've lapsed.

12 (Reporter clarification.)

13 A. Is that -- I don't think you mean a regulatory  
14 investigation in that context. I think you're talking  
15 about from a regulatory agency that would have some  
16 relevance to this litigation.

17 Q. Yeah. I don't know about relevance to the  
18 litigation. I am contemplating something slightly more  
19 formal. Are you aware of anything besides, like, you  
20 didn't pay your required levy?

21 A. No, not for Automotive. You know, nothing  
22 like that.

23 Q. What about for Group?

24 A. Also not for Group. Yeah, nothing from --  
25 nothing from, you know, the Swiss securities regulator,

1 nothing from, you know, occupational safety and hazard,  
2 whatever that position is. I'm really not aware of  
3 anything like that.

4 **Q. What authority did Mr. Leshem have at**  
5 **Automotive?**

6 A. Well, in his capacity as the listing agent of  
7 its subsidiary Rymark is my understanding of pretty much  
8 what -- the way that he interacts. To the extent that  
9 he also interacted with Nicolai Colshorn when Colshorn  
10 was a director at either Automotive or Group level, he  
11 would have been working with either the implicit or  
12 potentially the explicit authorization of the board.

13 So, formally, as the listing agent of a  
14 subsidiary, Rymark. Informally, in a capacity as a  
15 consultant to the board, et cetera. Along those lines.

16 **Q. Same answer for Group?**

17 A. I think that's correct.

18 Very quickly, are we done with this?

19 **Q. Yes.**

20 A. Same answer for Group, yes. I think that --  
21 well, certainly, he collaborated with the board of  
22 directors, but also with Mr. Markosian at the Automotive  
23 level. One could be saying that he was an agent of the  
24 president of AmeriMark Automotive insofar as he was  
25 working for Mr. Markosian until August of 2020.

1 Q. I'm going to mark Exhibit D 119.

2 (Exhibit D 119 was marked.)

3 Q. (BY MR. RICHARDS) So, Mr. Bernhardt, you have  
4 in front of you an email chain dating January 2019;  
5 correct?

6 A. I do.

7 Q. And you see that the first -- well, let's look  
8 first at the second email on this first page, which is  
9 from Nicolai Colshorn to Miron Leshem, correct?

10 A. Mm-hmm.

11 Q. And Mr. Colshorn says, "I forwarded you the  
12 offer from Computershare for the Swiss share registry."

13 A. I see that.

14 Q. I imagine from this that Colshorn has gotten a  
15 quote from Computershare that puts the electric share  
16 registers. Is that about right?

17 A. I suspect that's correct.

18 Q. And Mr. Leshem responds, "Dear, Colshorn, this  
19 is acceptable. Please engage in Computershare."

20 A. I see that.

21 Q. Why would Mr. Leshem have been making  
22 decisions about whom to engage for an electronic  
23 register?

24 A. Well, I think that's a slight  
25 mischaracterization. I don't think this is a decision.

1 I think Mr. Colshorn probably had no idea what a  
2 reasonable offer from a share registry would look like.

3 Sorry. I kicked my lawyer again.

4 Mr. Leshem's entire role here was to -- was to  
5 serve that purpose -- was to guide the companies through  
6 the listing process, and I would interpret that being he  
7 took a look at it. Mr. Colshorn is going to have to  
8 sign it. Mr. Colshorn made -- I can see down here  
9 below -- made the initial contact to Computershare, and  
10 it seems like the work flows.

11 Q. You can set that one aside, and I'm going to  
12 mark Exhibit D 120.

13 (Exhibit D 120 was marked.)

14 Q. (BY MR. RICHARDS) Mr. Bernhardt, you're now  
15 looking at an email dated November 22nd, 2019; correct?

16 A. I am.

17 Q. And this is from Mr. Leshem to Mr. Kappeler?

18 A. It is.

19 Q. And at the time Mr. Kappeler would have been  
20 corporate counsel to Automotive or Group or both?

21 A. Potentially both. I don't know what his exact  
22 would have been on this exact date, but certainly here  
23 he would have been acting in Automotive's capacity.

24 Q. And you say that because the subject of this  
25 email is "AmeriMark Automotive AG EGM"?

1 A. Yes.

2 Q. And what does EGM mean in this context?

3 A. Extraordinary general meeting, but I'm not  
4 sure if that -- yes. I know exactly what this context  
5 is. That's an extraordinary general meeting.

6 Q. Can you give me sort of the 30 second primer  
7 on what an extraordinary general meeting is?

8 A. This is a meeting that's not an annual  
9 meeting. Any meeting called by the shareholders or by  
10 the directors outside of the annual meeting process.

11 Q. So the meetings I described earlier as special  
12 meetings could also be characterized as extraordinary  
13 meetings?

14 A. In fact, I think they're almost the exact  
15 equivalence in Switzerland, yes.

16 Q. And you're in CC and so is Mr. Colshorn.

17 A. That's correct.

18 Q. And Mr. Leshem says, "Dear Felix: Please  
19 accept this email as formal authorization to commence  
20 activities to call an EGM and take any and all other  
21 steps necessary to secure the cancellation of part or  
22 all of the Amerimark Group AG CHF0.10 Bearer Shares and  
23 the concomitant capital reduction."

24 Do you see that?

25 A. I do.

1           Q.     So why did Mr. Leshem -- why was he empowered  
2     to give Mr. Kappeler formal authorization to call an  
3     EGM?

4           A.     Well, again, here he's copied on Mr. Colshorn.  
5     The background on this EGM is important to understand  
6     exactly why Mr. Colshorn would have relied on Mr. Leshem  
7     to help guide through this process.

8                     So this EGM, which I don't think actually ever  
9     took place, was to deal with the problem that the Vienna  
10    Stock Exchange was irritated and no longer wanted  
11    AmeriMark Group to have two classes of shares, and they  
12    also -- there was also a problem in Swiss law that  
13    bearer shares were being faced out and forbidden, and  
14    the bearer share prohibition was actually fairly  
15    stringent. If you still had bearer shares, they were  
16    not allowed to vote or have any dividends at a company  
17    after a particular date. From my memory, that date was  
18    going to be somewhere in 2021. The law was enacted in  
19    2017 to 2016. I'm doing that from memory, but I think  
20    I'm close.

21                    So, obviously, the company had to take  
22    measures to deal with this, not only because of the  
23    Vienna Stock Exchange issue here but also because the --  
24    sorry. Not only because of the bearer share issue, but  
25    also because the stock exchange doesn't want to two

1 classes of shares. We discussed that a little bit  
2 earlier today. Exchanges hate that.

3 The problem here was that the bearer shares  
4 had a par value of ten rappen, which is Swiss cents, and  
5 the registered shares were half of that. Our first idea  
6 in conjunction with corporate counsel to deal with this  
7 issue is to cancel the shares as you see referenced  
8 here. That idea came from Mr. Leshem. Mr. Leshem was  
9 far more experienced in that kind of corporate  
10 governance than anybody else on this email, for sure.

11 Later it came out that we couldn't actually do  
12 that. That's not material to your question, but what's  
13 really going on here, in my estimation, is that  
14 Mr. Leshem copied Mr. Colshorn, just sort of cutting a  
15 corner and saying, "Look, let's do this, and this is  
16 what we need to do." And, also, I don't think  
17 Mr. Colshorn would have been able to describe exactly  
18 what the corporate activity, the corporate action here  
19 should be. Mr. Leshem could have done that in his  
20 sleep. I think that's the upshot of this email.

21 Q. So Mr. Leshem is just telling Mr. Kappeler  
22 letter what needs to happen, and he's putting  
23 Mr. Colshorn in CC so that Mr. Colshorn can object, but,  
24 of course, Mr. Colshorn is not going to; is that right?

25 A. Well, I don't know that he's not going to.



1 I've certainly see Mr. Colshorn often object to him, and  
2 ask him, he did it to me more than once. That's in  
3 production too, where he would say, "Just a second.  
4 Where do you have the authorization for that?" you know,  
5 every time he checked me up, and he was right. It's not  
6 my experience with him that he was a puppet. Not at  
7 all.

8 But, again, in this case, Mr. Leshem is the  
9 expert on this issue. It turned out that Mr. Kappeler,  
10 after we went into this for a while, figured out why  
11 this was going to be totally impossible to deal with,  
12 but I think that's beyond the purview of your question.

13 **Q. Why would it be totally impossible to deal**  
14 **with?**

15 A. Well, the cancelation of shares -- and here  
16 the EGM is referred to -- cancellation of shares  
17 requires more than an EGM. In the United States, I  
18 think it's easier to do. I'm not corporate lawyer of  
19 the United States on a state level anywhere, but I think  
20 it's easier to do.

21 But in Switzerland, this is a capital  
22 reduction. When you think about it, if you've got a  
23 shareholder and you're canceling their shares -- you are  
24 not buying them back, you are canceling them, you are  
25 destroying value -- at least the value of the share, ten

1 rappen in the case. You can't do that without obtaining  
2 consent and eventually we determined, although Felix has  
3 never seen this issue before that not only do you have  
4 to obtain consent, you have to obtain consent from every  
5 single shareholder.

6 As we discussed many times, the bearer shares  
7 in the AmeriMark Group were an absolute mess. Nobody  
8 knew who were the shareholders were. Some of the  
9 shareholders might not have known who they were. So  
10 there was no way to do this. It was an effort, and then  
11 we had to abandon it. And then here you see him  
12 referencing work with Mr. Wenzl. I think also Miron  
13 here is copying Felix so that Felix has some information  
14 to go back to Mr. Wenzl and talk about the actions we  
15 were taking to get out of the mess that the bearer  
16 shares had put us in.

17 **Q. Was Mr. Rechtman on the board with the plan to**  
18 **cancel the bearer shares.**

19 A. I don't think we ever got around to talking to  
20 him. We would have had to have asked him because he  
21 certainly had bearer shares. I mean, actually, I've  
22 heard differing statements on how many he had, but he  
23 might have still been a supermajority shareholder at  
24 this point. I'm pretty sure Mr. Rechtman would have,  
25 "Forget it." I'm guessing and speculating, but my

1 understanding of Orié Rechtman is he probably would have  
2 told us to pound sand.

3 **Q. Yea. Why would you agree to a cancellation of**  
4 **the shares?**

5 A. And I think that's what Miron didn't  
6 understand and I didn't understand at the time. It was  
7 a first idea of how to deal with this problem. Well,  
8 we've got the bearer shares. It's a huge pain in the  
9 ass. Why don't we just get rid of them? How would you  
10 do that? And Mr. Leshem's out here, "Well, let's just  
11 cancel them," which you can do, I think a lot easier in  
12 the United States. I've never done it, but I think it's  
13 probably easier.

14 **Q. Was there ever a deal described --**  
15 **contemplated with Mr. Rechtman where someone would pay**  
16 **him, and in exchange, he would agree to have his shares**  
17 **canceled?**

18 A. You have skipped ahead in school. That was  
19 exactly the next idea. What if we buy everybody back?  
20 What if we do an offer and buy everybody back? And if  
21 you do that, you make kind of a, "Okay. We'll buy your  
22 shares," and then there is -- I'm doing this from  
23 memory, and I'm not a practitioner in Switzerland, but I  
24 remember Felix discussing the fact that there would be a  
25 provision in Swiss law so that if you got a certain

1 number of shareholders to agree, you could kind of  
2 force -- you know, it's a squeeze out, essentially;  
3 right? And you could do that, and I can't remember what  
4 the number was, but it was certainly, like, 90 percent  
5 or higher. Once we realized that, we said, "Well,  
6 that's never going to happen either."

7 **Q. So then the plan changed to convert these**  
8 **things to registered shares; correct?**

9 A. Correct.

10 **Q. And that was easier?**

11 A. Much easier. I can't remember the exact  
12 mechanics, but it's much easier because you're not  
13 eliminating any kind of value. You're not destroying  
14 shares, and you don't have to, (a), come up with the  
15 capital, and, (b), contact all the shareholders to buy  
16 them out.

17 **Q. Was the conversion of the bearer shares to**  
18 **registered shares a dilutive event for the other**  
19 **shareholders?**

20 A. It wouldn't have been a diluted event for the  
21 conversion. The admission to trading of the new shares  
22 into the existing pool of tradable shares would have  
23 been a dilution for sure.

24 **Q. Why would have been the dilution rather than**  
25 **just the creation of the new shares to begin with?**

1           A.     Well, let's talk about exactly what dilution  
2     means.   So in way converting the shares is not a  
3     dilution because the share capital across the board  
4     doesn't change.

5           **Q.     Right.**

6           A.     And each shareholder is in the same basic  
7     economic position, but from the perspective of somebody  
8     who has tradeable shares, having 6.8 million tradeable  
9     shares come on market is the worse thing in the world.  
10    That's hugely dilutive to your trading ability, to your  
11    liquidity.   It's not diluted from a capital perspective,  
12    but it's certainly not what you want to see.

13          **Q.     Capana had tradable shares during this time;**  
14    **correct?**

15          A.     It did.

16          **Q.     Did it object to the plan to convert the**  
17    **bearer shares to registered shares?**

18          A.     No, because Capana was intimately aware that  
19    the consequence might be delisting if the Vienna Stock  
20    Exchange wasn't -- wasn't happy.   And, also, Capana,  
21    unlike some maybe some smaller shareholders who don't  
22    know a lot about corporate governance knew that  
23    eventually the bearer shares were going to cause other  
24    problems because they were becoming illegal under Swiss  
25    law.

1                   So some shareholder who doesn't know these  
2   things might go -- might care or not care, but once you  
3   sort of know what the issues are -- and Capana wasn't  
4   interested in really selling large amounts of shares on  
5   the market. We wanted to use -- this is now 2019. We  
6   were committed to using those shares in the Philomaxcap  
7   transaction.

8                   (Reporter clarification.)

9           Q.    Okay. You can put that one to the side for  
10   now. I'm going to mark two exhibits at once. The first  
11   one will be Exhibit D 121, and the second will be  
12   Exhibit D 122.

13                   (Exhibits D 121 and D 122 were marked.)

14          Q.    (BY MR. RICHARDS) All right. So we're  
15   looking now at Exhibit D 121, which does not have a page  
16   or stamp on it and Exhibit D 122 which does have one;  
17   correct?

18          A.    I see that.

19          Q.    And D 121 is a draft version of the complaint  
20   that was filed in this action. We got it from  
21   Mr. Christiansen, your local counsel, about a week  
22   before the complaint was filed.

23                   If you'll turn to paragraph 13 of this draft  
24   complaint on page 4. Do you see where I mean?

25          A.    I do.

1           Q.    "Seeking to have Rymark, a Utah-based  
2    automotive dealership, publicly listed an a European  
3    exchange through a foreign holding structure, on May  
4    9th, 2016, Markosian, who then owned Rymark outright,  
5    injected 100 percent of Rymark shares into Automotive.  
6    Markosian later assumed control of the Swiss entity  
7    AmeriMark Group into which he injected 100 percent of  
8    the shares of Automotive to form AmeriMark Group as a  
9    master holding company. In exchange, Markosian  
10   eventually retained 35 percent of the outstanding shares  
11   of AmeriMark Group, and a number of his friends, family,  
12   and Rymark's senior management also came to own shares  
13   of AmeriMark Group."

14               Do you see that?

15           A.    I do.

16           Q.    Is 35 percent the correct number?

17           A.    Of the outstanding register shares of  
18   AmeriMark Group, yes. I believe that's correct. That  
19   would be -- what -- his 6.4 million over 20 million. I  
20   haven't done that math right this second in my head, but  
21   I think that's correct.

22           Q.    If you'll now look at Exhibit 122, turn to  
23   page 5, you'll see this -- sort of the second half of  
24   paragraph 13 at the top.

25           A.    Yes.

1 Q. And at the end of that first line, there's the  
2 word "in." Do you see where I mean?

3 A. No. I'm sorry. Got lost for a second. We're  
4 on page 5.

5 Q. "In exchange, Markosian eventually retained  
6 approximately 32 percent of the outstanding shares of  
7 AmeriMark Group."

8 So why did the number change from 35 to 32?

9 A. Is there a calculator I can look at because I  
10 can probably figure out where that number came from, if  
11 there is one. I'm guessing that this is 6.441855 over  
12 20 million, which would be the outstanding registered  
13 shares of AmeriMark. I'm not positive.

14 Q. So someone just did the math wrong the first  
15 time is your --

16 A. Well, I'm not going to claim -- I would like  
17 to -- let's do the math and figure out where the number  
18 came from, if you want to. I don't know whether it's  
19 wrong or right.

20 Q. And I'm mainly just concerned with the change.  
21 If you don't have any recollection of why the change was  
22 made, then that's fine for today's purposes.

23 A. I don't.

24 Q. Okay. Regardless, 32 or 35 percent is not the  
25 proportion of shares that Mr. Markosian had if we count



1     **the converted bearer shares; correct?**

2           A.     Well, but outstanding shares, outstanding  
3     registered shares, I think it might be correct. There  
4     also is a portion of share capital -- so you have to ask  
5     that question. Outstanding shares is sort of an  
6     encompassing term; right?

7           **Q.     How many outstanding shares of AmeriMark Group**  
8     **are there?**

9           A.     Well, in which class?

10          **Q.     Well, is it not one single class now?**

11          A.     Clearly on the usage here I don't think that  
12     it is.

13          **Q.     I'm sorry. Say that again.**

14          A.     I said in the usage here, I don't think it is  
15     a single class.

16          **Q.     This is a document -- both of these documents**  
17     **are dated 2023; correct?**

18          A.     I don't see -- I don't actually have any idea  
19     what the date on this document is. This one is  
20     stamped -- excuse me -- July 18th, '23. I have no idea  
21     what the date on this document is.

22          **Q.     I'll represent that we received it July 10th,**  
23     **but, regardless, the complaint was not drafted before**  
24     **2023; correct?**

25          A.     I don't know exactly the timing of the

1 drafting of the complaint. I can't testify to that. I  
2 don't know. I can't do that with any specificity.

3 Q. Well, if I asked you today, you know,  
4 January 24th, 2025, what percentage of the outstanding  
5 shares of AmeriMark Group Mr. Markosian owned -- I won't  
6 ask you to do the math on the spot, but could you  
7 ballpark it for me?

8 A. Well, but today there's a single class of  
9 shares.

10 Q. And there's also --

11 A. And in the time that they were talking about  
12 there, I don't think there was a single class of shares.

13 Q. I see what you mean. In the time described in  
14 this portion of the complaint. Is that the idea?

15 A. Well, that certainly was being referred to.  
16 So so far as I understand. I mean, there's not a  
17 specific time for me to talk about. Eventually retained  
18 approximately 32 percent -- eventually, from when,  
19 obtained approximately 32 percent. Is that a final  
20 number either? Look, I know and We can nitpick about  
21 this all day, but my impression of it is it's materially  
22 accurate statement.

23 (Reporter clarification.)

24 Q. There was an initial effort to --

25 A. I'm finished. I'm sorry.

1 Q. Yes. Thank you.

2 A. Initial effort, please.

3 Q. There was an initial effort to list AmeriMark  
4 Automotive on the -- excuse me -- on the Marche Libre,  
5 M-a-r-c-h-e L-i-b-r-e, exchange in France; correct?

6 A. That is correct. Just to -- not to split  
7 hairs, but I think the Marche Libre is a Euronext  
8 exchange.

9 (Reporter clarification.)

10 A. So sometimes we use this interchangeably.  
11 This would be the Marche Libre, the free market in  
12 Paris, which I believe at the time was Euronext  
13 exchange, yes.

14 Q. And you've -- you've sort of been deliberate  
15 over the last day and a half about differentiating  
16 between the admission of new shares and an IPO.

17 A. Yes.

18 Q. This would have been an IPO?

19 A. No.

20 Q. No, it would have been a listing of shares?

21 A. Not a listing. This is the admission of  
22 trading of existing shareholders into trading. Right?  
23 So no shares -- new shares are being offered. This is  
24 often, you know, sloppy language. I've been guilty of  
25 it myself in the past. No new shares are being offered.

1 There's no shares being offered to the public, for  
2 instance. This is an opportunity for existing  
3 shareholders to have listed shares that they may then  
4 sell through their accounts to third parties.

5 Other important part about that is the entire  
6 transaction, which created AmeriMark Group, with the  
7 exception of Mr. Markosian offering his Swiss shares to  
8 his U.S. person shareholders in the United States. No  
9 other part of the transaction all the way up until the  
10 listing actually touched any place other than  
11 Switzerland and France.

12 So, again, the 19 shareholders Mr. Markosian  
13 identified on his share ledger June 17th, 2016, are  
14 going to have their shares which were being held as  
15 registered shares in Switzerland dematerialized at SIX  
16 SIS in Switzerland, then deposited in his BankM transfer  
17 account in Switzerland, custody in Switzerland. Then  
18 the shares will be admitted to trading, and at that  
19 point they can, at the shareholder's option, be  
20 delivered to the brokerage account of the shareholder.

21 There's no public offer of shares. There's no  
22 new issuance of shares by the company. It's a common  
23 misnomer. Like I said before, I've been as guilty of it  
24 as anybody. These aren't really listings. They're  
25 admissions to trade.

1           **Q.    Who participated in that initial effort?**

2           A.    That is an incredibly long list.  There's an  
3   interrogatory on this too, and I think I'm on my second  
4   page filling that out.  I mean, how much time do you  
5   want me to spend?  How deep do you want me to go?  Do  
6   you want me to talk about the principles that I know  
7   about?  Do you want me to go all the way down to the  
8   lawyers, many of whom I don't know that well.  I'm not  
9   trying to evade your question.  It's just a really  
10  burdensome question.

11           **Q.    No.  I appreciate the effort to clarify.**  
12 **That's perfectly fine with me.**

13                   **Who was the listing agent?**

14           A.    The listing agent -- so Mr. Leshem would have  
15  been Rymark's -- at least his contract calls him the  
16  listing agent.  Now, there's also -- and I don't know  
17  what it would be called in the Marche Libre, right, but  
18  what we would call a capital market's coach at the --  
19  when at the Vienna level.  I believe that would have  
20  been Alex -- I know that was Alexander Coenen.  I don't  
21  know what the title is, but he was approved by the  
22  exchange, had a relationship with the exchange -- this  
23  is only my understanding, but I think I'm right -- and  
24  had, you know, connections with the exchange.  He was  
25  the sort of liaison to the exchange for AmeriMark.

1                   So listing agent of Rymark, according to his  
2   agreement, Mr. Leshem. I don't know what we're calling  
3   listing -- I think his agreement, from my memory signed  
4   in June of 2016, Mr. Coenen's agreement with Capital  
5   Lounge called it a listing services agreement. So maybe  
6   he was a listing servant. I don't know, but I think  
7   that's what you're talking about -- is those two roles.

8           **Q.    And in the ordinary course when one is trying**  
9   **to get shares admitted to an exchange like the Marche**  
10 **Libre, there's an application process --**

11           A.    Right.

12           **Q.    -- and an information memorandum is presented;**  
13 **is that right?**

14           A.    I'm not positive there's always an information  
15 memorandum. For example, on the multi -- the effort to  
16 admit to the multi stock exchange -- I think it was much  
17 more abbreviated. The prospects listing -- I think that  
18 was, like, a four-page application. That was never  
19 completed; so I don't know if there was one. I don't  
20 know that there always is.

21                   I believe for the Marche Libre there was --  
22 any information documented in the information  
23 memorandum. The reason it's called that -- and another  
24 important distinction -- it's not a prospectus. It's  
25 not reviewed by the regulatory authority or the -- it's

1 reviewed by the exchange, potentially. I'm not totally  
2 familiar with the Marche Libre process as much as I am  
3 with the process in Vienna.

4 **Q. How far did that process go before it was**  
5 **determined that it wasn't going to be successful?**

6 A. I think the final sort of we better shift to  
7 Malta -- and, again, I'm doing this from memory, had to  
8 have been late 2016 to early 2017. That's when in the  
9 production I see old conversations switch between  
10 Ms. Small, Mr. Markosian, Mr. Leshem, Mr. Hesterman  
11 still at this time, maybe even John Kirkland, and also  
12 Eric Gardiner, the employee, got very involved in the  
13 Malta at the end of 2016 but certainly in 2017.

14 **Q. And why was -- what went wrong with the Marche**  
15 **Libre?**

16 A. Well, there was some disputes -- and I'm doing  
17 all this from email production and from memory, but  
18 there was some dispute between Mr. Leshem and Mr. Coenen  
19 that Mr. Coenen had missed a detail. It was  
20 understandable in retrospect, and I spent a great deal  
21 of time on this issue because I knew this was going to  
22 be important to talk about today.

23 There was a great deal of back and forth  
24 because apparently Mr. Coenen had missed an obscure  
25 detail, and that was the Marche Libre stopped accepting

1 Swiss entities for applications for listings. And, in  
2 fact, I went in order to kind of validate this and look  
3 back and forth about it. I went up and looked up every  
4 press release involving a listing that the Marche Libre  
5 issued going back to 2014. I said either earlier today  
6 or perhaps in testimony yesterday -- they've blended  
7 together a bit for me by this point -- that the last  
8 Swiss-listed company on the Marche Libre starting from  
9 2015 was 4Service Cloud Tech. It was listed in 2015 on  
10 the Marche Libre.

11 The next Swiss company to be listed on the  
12 Marche Libre was not until 2021. I'm almost positive  
13 that's true. I look very carefully at all that stuff.  
14 It's all in French. So I had to struggle through it.

15 Why? Well, there's a fundamental difference  
16 in Swiss and European union law. Swiss is not --  
17 Switzerland, the confederation, is not part of the  
18 European Union. European Union Law, when it comes to  
19 shareholders, is very transparency oriented. In fact,  
20 they started a new transparency register now. So that,  
21 you know, almost all shareholders are going to be at  
22 least disclosed to a governmental list in EU.

23 Switzerland does not share that sentiment. In  
24 Switzerland, as long as it's been, and this is a legacy  
25 of World War II, and, of course, you know, the Gestapo



1 hunting down people in their bank accounts. Switzerland  
2 has not been transparent. It's just a different policy.  
3 The board of directors of the Swiss company is not  
4 permitted, without good cause and potentially without  
5 consulting the shareholders, to release shareholder  
6 information, including the identity of shareholders.  
7 France, and the EU in particular, hate that policy.

8 In addition to that, starting in particular in  
9 2019 but already brewing at this point in time, 2016,  
10 there was a severe rift between the European Union  
11 Switzerland. So I investigated that also to see if that  
12 played into a role what motivated the Marche Libre not  
13 to accept Swiss companies. Sure enough, there was a lot  
14 of lunging back and forth. EU has been trying to  
15 conclude a set of agreements -- international  
16 cooperative agreements with Switzerland that would  
17 essentially, you know, make it more harmonized with the  
18 market. But it was so contentious that by 2019, the  
19 European Union unilaterally removed all Swiss companies  
20 from all European exchanges, all of them, including  
21 Euronext. It's a fight over market access, and it was  
22 already starting in 2016, and this is one of the issues.

23 Switzerland said, "I'm sorry. We're not going  
24 to allow shareholder list to be released." So the  
25 Marche Libre just wasn't going to accept the

1 application.

2 And my understanding -- although I don't have  
3 any personal knowledge of it. This predated me by  
4 years -- but that Mr. Coenen and Mr. Leshem had a tiff  
5 over this. They recovered and came up with the next  
6 plan, which was the prospects listing in multi.

7 It's a long answer, but I think the color is  
8 important to understand because I know this has been a  
9 point of contention. Did the Marche Libre think  
10 something was changing about the deal and reject it? My  
11 understanding is that there was never even a formal  
12 objection, and I'm not totally sure that the application  
13 was even fully submitted. I think it came to light that  
14 it was just not going to be approved. This is a very  
15 European thing. Sometimes they don't say no. They just  
16 keep not saying yes.

17 **Q. You mentioned European markets expelling, for**  
18 **lack of a better words, Swiss companies from trading.**  
19 **Did that happen to 4Service Cloud Tech?**

20 A. No. This was in 2019 from my memory. It was  
21 a big deal. It was all over the news.

22 **Q. So after 4Service Cloud Tech had been**  
23 **delisted?**

24 A. Correct. I think it was late 2019. I'm doing  
25 that completely from memory, but it's very easy to look

1 up. It was a huge -- at least for Switzerland and  
2 Europeans.

3 Q. I think you answered this. I was going to ask  
4 you whether Automotive got a rejection letter from  
5 Marche Libre, and I think you said you're not aware of  
6 one; is that correct?

7 A. I've never seen one in the papers. I don't  
8 believe one exists.

9 Q. All right. Let's look briefly at an email I  
10 think you have sort of alluded to right now. We're  
11 going to mark this -- oh, it's been premarked, D 4.

12 (Previously marked Exhibit D 4 was  
13 introduced.)

14 Q. (BY MR. RICHARDS) So this is an email chain  
15 between Miron Leshem and others dated 2 November 2017;  
16 correct?

17 A. I see that.

18 Q. Let's turn to the second page, the back of the  
19 first sheet of the document.

20 A. Just to note really quickly, I don't know that  
21 it's relevant, but I don't see -- for some reason I  
22 don't see the company on here anyway, but I don't care.  
23 Let's keep going.

24 Q. All right. So on the second page here, do you  
25 see the first email on the page from Mr. Leshem to

1 Daniel Gysi and Beat Weibel?

2 (Reporter clarification.)

3 Q. I'm sorry. Turn the page. Yep. That one.

4 First email on the page from Mr. Leshem?

5 A. I'm sorry. I'm still lost. This one here. I  
6 have it. Also, this is from Hesterman, I guess. I  
7 don't see a Bates number.

8 Q. Yeah, that's right.

9 A. That's fine. Thank you.

10 Q. Mr. Leshem here says the following,  
11 "Gentlemen, 4Cloud Services remains listed on the  
12 Euronext Access (formally the Marche Libre) under ticker  
13 symbol MLOVE. The recent price was EU 0.13 per share.  
14 There are approximately 400,000 shares in the public  
15 float. There is almost no trading activity."

16 This is what you were describing earlier with  
17 4Service Cloud Tech being moribund or dormant on the  
18 exchange, yes?

19 A. Well, there are a couple of things. I don't  
20 want to quibble, but I know there were a few different  
21 4Service Cloud or 4Service companies, and here he  
22 doesn't write 4Service Cloud Tech. He writes 4Cloud  
23 Services. I do believe that we're probably talking  
24 about the same company, but I just want to call it out  
25 just in case. I don't remember what the ticker was.

1 This was probably 4Service Cloud Tech, probably.

2 Q. Okay.

3 A. And I apologize. Your question was does it  
4 match what I described? Yes. The company was moribund.  
5 It was -- I wouldn't say dormant, but the trading  
6 activity was slack.

7 Q. Two paragraphs down, "At the same time." Do  
8 you see where I am?

9 A. One, two. Yes.

10 Q. "At the same time, AmeriMark Automotive AG  
11 remains a private Swiss company in good standing. The  
12 company has a thriving business, and it's growing. As  
13 you recall, we originally attempted to list AmeriMark  
14 with Capital" -- it says "fro" -- I assume it means "for  
15 Markets on the Euronext but failed to do so through the  
16 malfeasance of Alexander Coenen."

17 A. I can clarify the "Capital fro Markets."  
18 Capital for Markets is sort of a DBA of Capital --  
19 Capital Lounge. So this would be either a related  
20 entity that Alexander Coenen was the principal of or  
21 maybe his brand. And so, you know, it's describing  
22 getting Capital for Markets. Capital for Markets.  
23 That's what I think Mr. Leshem was referring to.

24 Q. And I actually understand your prior testimony  
25 to mean that when Mr. Leshem says the malfeasance

1 allowed under Coenen, you think he means that Mr. Coenen  
2 didn't realize that Euronext wasn't accepting Swiss  
3 companies?

4 A. I think that's right. That's my  
5 understanding. By the way, they did makeup eventually,  
6 and he worked on the prospects, et cetera.

7 This is -- let me stop you for just a second.  
8 Let's talk about the malfeasance piece and the  
9 relationship between Leshem and Coenen here again.

10 So this is now November 2017; right? This  
11 means that I think by this time the Malta listing effort  
12 has fizzled. Alexander Coenen was intimately involved  
13 in the Malta listing effort. So I think -- Miron has  
14 a -- Mr. Leshem has a tendency to do this to be  
15 bombastic, but he worked very closely with Mr. Coenen,  
16 and Mr. Coenen worked with the defendants also on Malta  
17 listing. So if he was so upset by the malfeasance in  
18 the Marche Libre, I don't know why he would have worked  
19 with them. I think he's just being his cranky self in  
20 this email, but your point is taken.

21 Q. So I've changed my mind. Let's stay here for  
22 one more minute.

23 A. Sure.

24 Q. Will you go to the last page of text? This is  
25 still Mr. Leshem writing, and he says, "I note the

1 following." Do you see where I mean?

2 A. I do.

3 Q. "Number I, Herr Gysi incorporated both  
4 companies and is familiar with them.

5 "Number II, Herr Colshorn is the Swiss  
6 director for both companies."

7 Do you know how many companies besides  
8 4Service/AmeriMark Group that Mr. Leshem and  
9 Mr. Colshorn worked on together?

10 A. I don't.

11 Q. Are you aware of any other companies besides  
12 the ones I've just identified?

13 A. Not specifically, no. I don't know of any.

14 Q. What about Cog International [ph]?

15 A. What about Cog International?

16 Q. Was Mr. Colshorn a director of Cog?

17 A. I don't believe that he was. I could be wrong  
18 on that. I haven't looked at Cogs in a long time.

19 Q. Are you aware of Mr. Gysi and Mr. Leshem  
20 working on any other companies together besides the ones  
21 we've just identified?

22 A. I'm not.

23 Q. Okay. All right. You can put this one to the  
24 side.

25 So why did the effort shift to Malta from the

1 **Marche Libre?**

2 A. Well, the Marche Libre effort fizzled, and so  
3 my interpretation, having read the discovery --  
4 reminder. This is way before my time -- but reading the  
5 discovery is that Mr. Leshem had an obligation to get  
6 the company listed. And, in fact, you know, he agreed  
7 to do that, and so I think he pivoted to Malta.

8 It seems like -- and I'm speculating -- that  
9 Alexander Coenen probably suggested that. Alexander  
10 Coenen -- I don't know that Malta had a capital markets  
11 coach kind of status. I see less, you know, production  
12 on that, but Mr. Coenen clearly participated in how to  
13 put together the application, which he sent to  
14 Mr. Markosian to sign, which I understand Mr. Markosian  
15 signed, did it, and forwarded on. That was forwarded on  
16 by direct post. So we see the application in its  
17 preparatory stage describing the company, describing  
18 Mr. Markosian shareholding and et cetera.

19 This is now -- I can't remember exactly when  
20 it's -- if it started in late -- I think it started in  
21 early -- early 2017 because for sure by that time Marche  
22 Libre was a done -- done project. And so my  
23 interpretation is that they needed to do somewhere else.  
24 The idea was to list on a European exchange. It's a  
25 small company. It's not going on the NYSC, and so the



1 next step was to go to Malta.

2 Q. And Mr. Coenen assisted with that. Mr. Leshem  
3 assisted with that. There were lawyers involved as  
4 well, I assume?

5 A. Correct.

6 Q. Why did the Malta effort failed?

7 A. The Malta effort appears to have failed  
8 because of the auditor, James Ellul in Malta. Let me go  
9 back just a little bit.

10 We talked before about different levels of  
11 scrutiny that an exchange will give an application;  
12 right? And the context of the Euronext rejection of the  
13 admission to trading of the AmeriMark Group shares --  
14 that they hadn't done enhanced due diligence because  
15 somethings were concerning. A similar thing, I think,  
16 happened in Malta but for different reasons.

17 So the first part of the process in Malta  
18 involved retaining Main Street, Limited, a  
19 multi-consulting and maybe accountancy firm. And the  
20 two principals there were Nic Bianco and -- Nicolas with  
21 a "C" -- N-i-c-o-l-a-s Bianco, which made actually  
22 reviewing this discovery quite a pain because of a bunch  
23 of emails with Mr. Markosian in it where it's Nic.  
24 "Hey, what about you, Nic? Hey, what about you, Nic?"  
25 Which made it really difficult to review.

1 But, anyway, Nicholas Bianco. There was  
2 someone else at Main Street Capitol. I think it was a  
3 man. His name escapes me. The process started there  
4 without the auditor; right?

5 And the reason I say Mr. Coenen was involved  
6 is because I see the application from him, and I see his  
7 name, and it was actually -- we talked about different  
8 levels of applications for different -- different  
9 exchanges. The application was, like, three pages and  
10 handwritten, and it looks like Mr. Coenen was the one  
11 preparing it. It says, you know, preparer, something  
12 along that lines, Alexander Coenen, at the bottom. That  
13 was, again, sent to Mr. Markosian for signature and then  
14 forwarded on.

15 So the process goes Ms. Small is putting the  
16 materials together, sends the financials along. You  
17 know, this is always the point where I have to point out  
18 by this time already material frauds were being  
19 representing -- misrepresentations were being made  
20 because Rymark Properties LLC was being included as a  
21 consolidated part of Rymark. It wasn't. We can go past  
22 that again because I talked about it a million times.

23 "Ms. small is participating actively and also  
24 enters now Eric Gardiner who is an employee and also a  
25 shareholder of Mr. Markosian. And you know, going back

1 and reading through the materials -- and I have this  
2 reaction to almost everyone of these application  
3 processes. There's a really solid, diligent effort at  
4 collecting these materials and putting it together.  
5 Absent the financial issues and absent, you know, what  
6 was -- misrepresentations and all that, the process is  
7 as messy as these processes are, but it's an interesting  
8 team dynamic that's working.

9 Ms. Small is incredibly responsive.  
10 Mr. Gardiner is responsive. Nic -- sorry --  
11 Mr. Markosian is directing the process. And the  
12 consultants -- Nic Bianco and his colleague who's name I  
13 can't remember going back and forth and developing a  
14 memorandum that's going to be used, and there's several  
15 drafts in production, which, of course, incorporates  
16 Rymark's financials in it, describes everything else.

17 And this goes on, and then something that I  
18 don't quite see -- because it's not in production.

19 (Reporter clarification.)

20 A. Something that I don't quite see in looking at  
21 all the documents when all production happens, maybe it  
22 was a phonecall, but I just don't see it in production.

23 And then Main Street brings in or Leshem  
24 brings in or the exchange brings in -- and there's at  
25 least one email from an exchange officer that's got the

1 exchange multi seal on it. It's clearly official. So  
2 the exchange is clearly at least a little bit involved  
3 in this process, and I think that is when the auditor  
4 comes in James Ellul.

5 (Reporter clarification.)

6 A. And he's with an accounting and certified  
7 audit firm. He's a certified auditor and CPA in Malta,  
8 and his role is to validate financials and the business  
9 and do risk analysis. We talked again about enhanced  
10 due diligence. I don't know that there was enhanced due  
11 diligence. It's possible that it's normally the process  
12 in Malta, but in this case it happened, and it was like  
13 two step for us. Main Street preparation exchange.  
14 Auditor appears.

15 So then there's a lot of back and forth, and  
16 Keddington & Christensen now is directly involved.  
17 They're having conference calls with James Ellul.  
18 Not -- I don't think Eric Keddington, but certainly Ted  
19 Jenkins directly involved in this process.

20 And what emerges is that Keddington &  
21 Christensen makes several modifications to the financial  
22 statements of Rymark because Keddington & Christensen  
23 are Rymark's accountants, not Automotive's accountants,  
24 and those have the effect of moving shareholder equity,  
25 the balance sheet item, up, and there are more than one.

1 And this apparently attracts the concerns and attention  
2 of James Ellul because -- in an email he writes back and  
3 responds. He says -- I'm going to quote this almost  
4 from memory. You can see it in production. The  
5 constant changes while within U.S. GAAP are  
6 concerning -- paraphrasing -- and raise questions about  
7 the integrity of Rymark's financials.

8 Now, if you know anything about accounting,  
9 that is a huge alarm bell. That is a huge alarm bell.  
10 What Mr. Ellul is basically saying is I'm not sure we  
11 believe these. And then he continues.

12 "In the constant changes, again, while within,  
13 potentially, the guidelines of U.S. GAAP create concerns  
14 about the independence of Keddington & Christensen,"  
15 which is James Ellul saying "I don't know that these  
16 guys are actually making independent judgments, and I  
17 think the management of Rymark might be -- have undue  
18 influence over them". And that is, again, if you know  
19 anything about accounting, a massive alarm bell.

20 To put those two things together is basically  
21 saying, "I don't believe your accounting, and I don't  
22 trust your accountants." There's nothing worse an  
23 auditor can say. It's just unbelievable, and there is  
24 some effort after that to restore things.

25 Also, the Subchapter S corporation thing is

1 brought up again. Eric Gardiner catches it -- actually,  
2 I think James Ellul caught it, and he said, "Currently,  
3 you're Subchapter S. Are you allowed to be?" And Eric  
4 Gardiner says no. The company's going to have a foreign  
5 shareholder. We're going to have to change to a C Corp.  
6 And then in a later email he says no. Help us  
7 understand when we have to change to a C corp or if it  
8 happens. So that was also caught, and I'm not sure if  
9 that factored into James Ellul's thinking or not.

10 But after that, although there was some  
11 attempt to fix it, things fizzled, and I don't think the  
12 application was even ever made finally. And why would  
13 you? Because you can't get the auditor to sign off, and  
14 this is the auditor that was supposed to endorse the  
15 financials to the exchange and wouldn't do so.

16 So that, to answer your question, is why Malta  
17 fizzled.

18 **Q. It was your understanding that the auditor's**  
19 **approval, if you will, or sign off on the numbers --**  
20 **that was all going to happen pre-application; is that**  
21 **correct?**

22 **A.** I think he -- I think that he was brought in  
23 to endorse the application so that the exchange had  
24 confidence. I'm not sure, like I said before, if that  
25 was a mandatory step in the Malta process or not. I

1 just don't know enough about it, and I couldn't tell  
2 from the production whether he was brought in because  
3 there was an enhanced due diligence concern by the  
4 exchange or for some other reason.

5 **Q. So Marche Libre fizzles. Malta fizzles.**

6 A. Yes.

7 **Q. Why not just go to Vienna?**

8 A. I can't tell you. There was going to be --  
9 that would have been a decision that Mr. Leshem would  
10 have been making in 2018, before my time, and I don't  
11 have anything in the records that would help me opine on  
12 why he would or wouldn't do it. Maybe he hadn't done  
13 anything else on Vienna. I think it was Coenen who had  
14 the connection to Vienna. Maybe he was pissed at Coenen  
15 because this is -- again, I'm speculating, but now  
16 there's been two fizzles with Coenen, and I don't know  
17 how involved Coenen was in the beginning in the reverse  
18 merger. Notice, it doesn't require a listing process  
19 reverse merger. Maybe that's why. Later he appears  
20 again. So I don't know. I mean, I'll speculate, but  
21 I'm only speculating.

22 **Q. In any event Mr. Leshem decides that the best**  
23 **option is reverse merger with a firm that's already**  
24 **listed on the Euronext; correct?**

25 A. Correct. And actually clever.

1           **Q.     How do you mean?**

2           A.     Well, it's a way to get into the listing  
3     process without, you know, having to spend the money,  
4     time, and effort of the full listing process, and there  
5     is a ton of correspondence with Mr. Leshem. I think  
6     it's Mr. -- what's his name -- Birmbaum? -- the  
7     French -- it might have been a different French  
8     attorney.

9           **Q.     Blimbaum?**

10          A.     It might have been Blimbaum. I don't  
11     remember, but another French attorney. In which he asks  
12     about this concept and asked the attorney to go to the  
13     Euronext and ask. And the Euronext comes back and  
14     says -- this is all in production -- and says, "Yeah,  
15     we -- we would definitely consider that. It's a weird  
16     structure, but we would consider it," which is one  
17     reason I think Mr. Leshem was so pissed off that this  
18     didn't happen. He had all these conversations, and then  
19     the exchange is like "non."

20                     (Reporter clarification.)

21          A.     The French no, "non."

22          **Q.     So your understanding is that Mr. Coenen was**  
23     **not involved in the reverse merger; is that correct?**

24          A.     I can't say that with great authority. I  
25     don't see a lot of them in there. I feel like I see him



1 later, but, again, I'm going through 75,000 documents of  
2 production from memory.

3 Q. So there was no listing agent for the reverse  
4 merger because -- at least in that -- in the way there  
5 was one with the efforts to list on Marche Libre and  
6 Malta?

7 A. That's a good question that I haven't thought  
8 about before. If there was a listing agent, maybe there  
9 would have to be for the admission of shares to trading  
10 after the merger. And, of course, that's when it all  
11 sort of collapsed; right? So was there a listing agent  
12 who ushered through that application? I sort of feel  
13 like there must have been because there was an  
14 application that was rejected, but I don't know the  
15 details, though.

16 Q. And would that have been Mr. Leshem? Would it  
17 have been a coach? Do you have any sense?

18 A. I don't. I don't know what the Euronext -- I  
19 think there was Euronext Access. I don't know what the  
20 requirements were there, and I don't see a lot in  
21 production on it.

22 Q. In any event, Euronext says, "No, we're not  
23 going to let you do this"?

24 A. In effect, yes.

25 Q. And then Group, by this point, goes to Vienna,

1 and I think you just testified that you thought that  
2 that was Mr. Coenen's idea, yes?

3 A. I do, because, again, he was the capital  
4 market's coach, and he was literally on the top three  
5 listed on the page for the capital market coaches you  
6 could select. I don't know if it was Mr. Coenen's idea.  
7 The idea definitely came in our direction from  
8 Mr. Leshem. I hadn't really talked to or met Mr. Coenen  
9 personally at this time.

10 Q. When is the first time you met Mr. Coenen?

11 A. It would have been in 2019, briefly in Zurich  
12 I think we had lunch once when the application process  
13 maybe was finished.

14 Q. And then did you periodically correspond  
15 during the listing process?

16 A. Not that much. Certainly there was some  
17 discussion, but I don't remember a lot of it. Really,  
18 you know, a lot of that -- of the AmeriMark stuff that  
19 was done -- all that listing stuff was done outside of  
20 my view. I was working more on trying to get the  
21 company stabilized, personally.

22 Q. To make sure there was something to list by  
23 the time the listing was approved?

24 A. Well, we did notice, that, first of all, you  
25 know, the company had a bunch of bills that we had to

1 deal with, and, you know, it was approaching its  
2 solvency, and then it turned out that there were a lot  
3 of things in there that were much worse than we thought.  
4 So that was -- I won't call a full-time job, but it  
5 definitely occupied a lot time. I also wasn't a  
6 principal at this point or these efforts would have been  
7 Mr. Staeger, Mr. Leshem, and I -- I assume Mr. Coenen --  
8 I know Mr. Coenen because I know that he -- well, he was  
9 writing the valuation report, and that was already  
10 published in June. So by May he must have already been  
11 working on it.

12 **Q. What application documents were submitted to**  
13 **the Vienna Stock Exchange in connection with AmeriMark**  
14 **Group's listing?**

15 MR. WORDEN: Calls for speculation.

16 You can answer.

17 A. The ones that I know for sure -- there's a --  
18 the one that I know for sure is the raw application  
19 document, and there's drafts of that in the production.  
20 I think that draft document was done in hard copy and  
21 sent hard copy to the exchange. I think there had to be  
22 a wet signature on that probably from Colshorn.

23 And there was an information memorandum, and  
24 that was sent in original form, and I think that also  
25 had to be signed by the serving person. There had to be

1 a wet signature on that. The testing person or the --  
2 that's the wrong term. The author of the report or the  
3 director asking for the listing -- that was Mr. Coenen.  
4 That was also sent directly to the exchange.

5 So we have copies of the drafts of those, both  
6 of those documents in production. Let me think. What  
7 else was sent to the exchange? No. Other submissions,  
8 I think, would have been after listing.

9 **Q. Okay. And the Vienna exchange admits**  
10 **AmeriMark Group -- although they only admit the**  
11 **20 million shares; correct?**

12 A. Correct. And this became a point of  
13 contention later.

14 **Q. Was Vienna Stock Exchange aware of the bearer**  
15 **shares at the time the application was made?**

16 A. Well, this is in dispute, but what we do see  
17 is that Mr. Wenzl was directed to the -- to the  
18 commercial register to look up the company, and for sure  
19 a copy of the registry extra was attached to the  
20 application, was part of the application. That's just  
21 required. Nobody does anything with that, though. All  
22 he had to do was glance at that to see that there were  
23 3.4 million bearer shares on the share ledger. And I  
24 think the reason that this became, you know, a point of  
25 contention, is that he got called out when somebody

1 asked him and he hadn't looked. That's me speculating,  
2 but I have pretty good grounds to speculate on that from  
3 what happened afterwards.

4 Q. So he should have figured it out, but he  
5 didn't, and it wasn't explicit in the application?

6 A. I think it was explicit in the application. A  
7 copy of the commercial register extract was part of the  
8 application. It had to be.

9 Q. Was it elsewhere described in the application,  
10 to your knowledge?

11 A. The only other document would have been maybe  
12 the information memorandum, and I don't know if it was  
13 or wasn't in the information memorandum.

14 A word about commercial register extracts.  
15 When I talk about those, we're really talking about, you  
16 know, sort of the -- I'm not sure what it would be here  
17 in Utah -- certificate of good standing. It's the  
18 basic -- it's got to go with everything, and the  
19 Europeans are very big on it. They want to know the  
20 company number because then they know tax jurisdiction  
21 it's in. CHE is the beginning of company numbers for  
22 Swiss companies. They know it's a Swiss company. You  
23 can look it up in the register, and you get all the  
24 directors. This is, like, the starting document for  
25 all. So I think that Mr. Wenzl had quite a lot of egg

1 on his face when somebody perhaps in the exchange asked  
2 him, "Why does this have two classes of shares?" Again,  
3 as we've discussed, exchanges hate that. So someone  
4 noticed it, and I think Wenzl probably dropped the ball,  
5 and he got very upset about it after that.

6 Q. And you think that explains some of his  
7 defensiveness about this?

8 A. I wouldn't call it defensiveness. I would  
9 call it aggressiveness, actually.

10 MR. RICHARDS: I'm going to mark Exhibit 123.

11 (Exhibit D 123 was marked.)

12 Q. (BY MR. RICHARDS) So you have in front of you  
13 Exhibit D 123, which is an email chain from  
14 October 2019; correct?

15 A. I do, and I'm familiar with this email.

16 Q. And just to orient ourselves, this is -- this  
17 is after the listing. AmeriMark Group is now listed on  
18 the Vienna Stock Exchange; correct?

19 A. Yes. I think it was listed in August.

20 Q. And on the back side of that first page, we  
21 see an email in German from Mr. Coenen to Mr. Wenzl;  
22 correct?

23 A. Yes.

24 Q. And Mr. Wenzl is a market official at the  
25 Vienna Stock Exchange?

1           A.     Mr. Wenzl is the head of listing at the Vienna  
2     Stock Exchange.

3           Q.     And then on the first page of t he exhibit,  
4     Mr. Colshorn writes to Mr. Leshem and helpfully provides  
5     an English translation of Mr. Coenen's email.

6           A.     Thank you, Mr. Colshorn.

7           Q.     So let me go first about halfway down  
8     Mr. Colshorn's translation. Do you see the paragraph  
9     that begins, "According to the company"?

10          A.     I do.

11          Q.     "According to the company (AmeriMark), there  
12     was a general meeting at which the complete withdrawal  
13     of the bearer shares was resolved. According to  
14     AmeriMark, these will be canceled."

15                 Is that true?

16          A.     Well, let's look at this timing because this  
17     pertains exactly to the email with Mr. Kappeler where it  
18     was discussed that perhaps these will be canceled;  
19     right? So according to AmeriMark, these will be  
20     cancelled, forward looking.

21                 What was the -- can we check the date of that  
22     email? Sorry to go back exhibits, but my memory is that  
23     email is, like, from September or something; is that  
24     right?

25          Q.     So it's D 120. You're welcome to grab it.

1 A. Thank you for that. D 117, D 119, D 120.

2 Okay. So this is later. Same time frame;

3 right? So we're all -- this is November 2019.

4 Already -- still, the idea is, yes, we're going to try  
5 and cancel -- withdraw and cancel the shares. So, yes,  
6 at this point in time -- and let's see what Mr. Colshorn  
7 had to say. "According to the company" -- he's  
8 representing on behalf of the company -- "there will be  
9 [sic] a general meeting." He's wrong there. It's an  
10 EGM.

11 Q. Yeah. I'm sorry.

12 A. I apologize.

13 Q. I think you said, "There will be a general  
14 meeting." This reads, "There was a general meeting";  
15 correct?

16 A. Let me see. "According to the company, there  
17 was a general meeting"; that's right. "... complete  
18 withdrawal of the shares was resolved. According to  
19 AmeriMark, this will be canceled." My mistake. You're  
20 right.

21 That's not right so far as I know. I don't  
22 think that that happened.

23 Q. No meeting had been called; correct, sir?

24 A. I don't think so. I don't think so. Also, it  
25 wouldn't have been a general meeting.



1 Q. It would have been an extraordinary meeting?

2 A. It would have been an EGM -- well, at least  
3 according to Mr. Kappeler's emails.

4 Q. Let's keep going in --

5 A. Now, once again, this is a translation,  
6 though, and one thing you have to understand about  
7 German to English translation is that the tense of verbs  
8 is very tough to do. I assume that this is correct, but  
9 that there was a general meeting -- "es war, es wird."  
10 I'm not sure.

11 Q. Let's keep going in Mr. Coenen's email  
12 translated. He says, "The AmeriMark Group" --

13 A. Wait. I apologize. When you say Mr. Coenen's  
14 email, you mean Mr. Colshorn's email where he is  
15 forwarding the Coenen email. Thank you. Go ahead.

16 Q. With the translation.

17 A. Go ahead.

18 Q. "The AmeriMark Group AG itself has nothing to  
19 do with 4Service Cloud Tech AG. It is an economic  
20 startup as the management of AmeriMark Gropu AG has  
21 taken over the shell of the former 4Service Cloud Tech  
22 AG."

23 Let's pause there. Are those two sentences  
24 consistent with your understanding?

25 A. I think they are. Nothing to do -- this is,

1 again, we talked about this earlier, and I testified to  
2 it, you know. When you take over the company, there's a  
3 rebirth in Swiss law. In this case -- also, you can  
4 take over a company in a way that you take over the  
5 operations and everything else. So if what Mr. Coenen  
6 through this translation is saying, is that the old  
7 operations are done. We have nothing to do with the  
8 business plan. The purpose of the company has changed.

9 In fact, I think the statutes did change the  
10 purpose of the company eventually in Group. The  
11 statutes from 4Service Cloud were annihilated, and  
12 Group's, I think, were totally different, and I think  
13 that probably included a purpose change in the company.  
14 That's easy to see. We have it in production somewhere.

15 So in that respect, I would say it is true.  
16 The language is inartful. I wouldn't have said  
17 AmeriMark Group has nothing to do with 4Service Cloud.  
18 I said, you know, has nothing to do with the 4Service  
19 Cloud business. But in his later sentence, he manages  
20 to heal that a little bit. It says it's taken over the  
21 shell of the former 4Service Cloud Tech AG, and I think  
22 that's correct.

23 **Q. He continues, "4Service Cloud Tech AG also had**  
24 **a completely different business purpose."**

25 **A. I anticipated that sentence apparently.**

1 Q. "The assets of the former 4Service Cloud Tech  
2 AG are now located in Crednology Holding Corp. which are  
3 traded under the ticker COHO" --

4 A. Mm-hmm.

5 Q. -- on the trading platform OTCMarkets."

6 A. Yep.

7 Q. Is that true?

8 A. It is -- or -- those are Orié Rechtman's  
9 companies, and what happened is -- it became a point of  
10 contention later, but what happened is, after the  
11 reverse merger, where he did, he pulled out those two  
12 COHO and whatever the other one was called --  
13 Crednology. COHO and Crednology.

14 Now, later, Nicole Kuster took some issue with  
15 the way that Mr. Rechtman had done that transaction and  
16 felt that he hadn't properly compensated the company.  
17 Mr. Rechtman said, "Well, I have this option agreement,  
18 et cetera," and it never really got resolved except I  
19 think AmeriMark Group simply had to write off those  
20 positions. But Orié took the position that those were  
21 his, and Ms. Kuster had some technical arguments for why  
22 they shouldn't have been or it should have been done  
23 differently, but at the end of the day, nobody was  
24 interested in those assets anyway. The idea, of course,  
25 was Rymark was the crown jewel of the estate.

1 Q. Second to last line on this page says, "Why  
2 the empty shell was taken over is beyond my knowledge."

3 A. So Coenen saying, "Why the empty shell was  
4 taken over is beyond my knowledge." Well, we speculated  
5 on how involved Coenen was before, like with the merger,  
6 as opposed to now, and there's perhaps, the answer. He  
7 wasn't.

8 Q. Well, I mean, it's obvious why the empty shell  
9 was taken over. It was to get AmeriMark Automotive  
10 shares traded; correct?

11 A. Yeah, I would agree with you but -- and,  
12 again, I don't know how good this translation is, but I  
13 can certainly say -- and there's a phrase in German, aus  
14 meine meinung. It means -- a-u-s m-e-i-n-e  
15 m-e-i-n-u-n-g. It means "it's out of my mind," and  
16 maybe that's the translation here. Beyond my knowledge,  
17 out of my mind. It sort of just means "wasn't my  
18 affair." I don't know that that's the case but --

19 Q. Let's now look at Mr. Leshem's email at the  
20 top of this same page. He says, "Hi, Nicolai. I'm  
21 aware of this from yesterday. As I said, Wenzyl seems  
22 to think that there is something 'fraudulent' about the  
23 fact that we did not disclose that 4Service Cloud was  
24 listed on the Euronext. Of course he had the  
25 handelsregister auszug from day one, which clearly

1 showed the name change, and he never even asked about  
2 it.

3 "We are waiting to talk to our attorney, Felix  
4 Kappeler, who will answer all questions on behalf of  
5 AmeriMark for us and also write additional explanation.

6 "Wenzl seems really angry and upset about  
7 this."

8 Do you see that?

9 A. Yeah, and that absolutely comports with my  
10 memory of those periods.

11 Q. And in an earlier deposition you described  
12 Coenen as the golden boy of the Vienna Stock Exchange.  
13 Do you recall that testimony?

14 A. Yeah. It was probably a little bit excessive,  
15 but he definitely had a very close relationship with  
16 Wenzl, and Wenzl told me that himself on one occasion.

17 Q. Is this the beginning of the end of that?

18 A. I don't know. You're asking me to speculate.  
19 I will tell you that within months of this they were  
20 definitely on the outs, and Wenzl was generally angry at  
21 all the companies that Coenen had anything to do with.

22 Q. With cause, would you say, Wenzl was angry  
23 or --

24 A. I don't know. I don't know what passed  
25 between them, you know, and, again, this company got

1 listed in 100 days from application, which I don't -- I  
2 don't know how many, you know, Vienna applications go  
3 that fast, but Wenzl was very keen to have the company  
4 listed, and it went very quickly. The approval was  
5 sailed through, and I think one of the things you see  
6 here is that Wenzl might have been a little less than  
7 careful, maybe because of Coenen, maybe that's what it  
8 was, but -- and I'm totally speculating now.

9 **Q. But you don't think there was, in Mr. Leshem's**  
10 **term, where it's something fraudulent about the failure**  
11 **to disclose that 4Service Cloud was listed on the**  
12 **Euronext?**

13 A. I'll go further. I'm not sure that there was  
14 a failure to disclose. I mean, you have -- you have the  
15 ledger. You can see also the two classes of shares.  
16 Did somebody send the, you know, the Euronext rejection  
17 letter to Wenzl? Probably not. But I -- I don't know  
18 exactly what happened there, and it's a little bit  
19 outside of the ken of AmeriMark automotive also. This  
20 is interactions that were involved in between these  
21 people personally.

22 **Q. Regardless, Mr. Kappeler is deputized, if you**  
23 **will, to answer Mr. Wenzl's questions and try to calm**  
24 **him down; is that about right?**

25 A. I think we should use a word other than

1 deputized.

2 Q. What word would you -- do you think is more  
3 accurate to describe Mr. Kappeler's role here?

4 A. Retained.

5 Q. He was retained, and his assignment was to  
6 communicate with Mr. Wenzl about this?

7 A. Well, not just that. I mean, he was general  
8 corporate counsel, I think -- outside counsel very  
9 quickly. Remember, it was Mr. Kappeler who actually  
10 recommended the project to Orbital and the reason that I  
11 got involved.

12 Q. You can put that to the side for now. I'm  
13 going to mark D 124.

14 (Exhibit D 124 was marked.)

15 Q. (BY MR. RICHARDS) You see here that this is a  
16 letter, excuse me, from Mr. Kappeler to Mr. Wenzl. Is  
17 that your understanding?

18 A. I do see that.

19 Q. And the first -- and we'll do this with a few  
20 exhibits. The first three sheets of this exhibit are in  
21 German, and then I have an English translation on the  
22 back. So let's start with the English.

23 A. May I briefly make a comment? I'm sorry.  
24 It's going to pertain to the translations.

25 Q. Go ahead.

1           A.     As you know, because you did the deposition.  
2     I was deposed here in September. In that deposition a,  
3     number of translations were presented, particularly  
4     related to press releases and so forth. In my process  
5     of preparing for this deposition, I reviewed those  
6     translations and found that many of them were materially  
7     really off, and so I really want to just make sure that  
8     that's on the record. And, frankly, that was extremely  
9     concerning. So I do want to be very, very careful about  
10    original documents in this deposition.

11           Q.     I understand.

12           A.     Okay.

13           Q.     So let's look at Bates -- well, the Bates  
14    aren't going to be helpful because the Bates are all the  
15    same, but the first page of the English translation,  
16    Bates 12400 in English. Do you see where I mean? I  
17    think one more turn.

18           A.     I have it.

19           Q.     Okay. Perfect. So let's look here at what's  
20    titled "Question Complex One, Bearer Shares," and the  
21    question Mr. Kappeler records here is "Why was trading  
22    on Euronext suspended on June 25th, 2019." Do you see  
23    that?

24           A.     I do.

25           Q.     And Mr. Kappeler says, "In July 2018, the



1 company created an additional 20 million registered  
2 shares, class B, alongside the existing 3.4 million  
3 bearer shares which were listed on Euronext class A."

4 Let's pause there. Good so far? That's correct?

5 A. I'm not sure about the classes.

6 Q. The numbers are correct and the time is  
7 correct?

8 A. I'm not 100 percent sure on the time when the  
9 shares were issued. It would be in the commercial  
10 register. The number of shares looks correct to me.

11 Q. Next sentence. "It then became apparent that  
12 Euronext was not happy with the complexity of a dual  
13 share structure." Pause there.

14 Is that true?

15 A. Yeah, I believe so. We discussed that in my  
16 prior testimony. Exchanges hate dual share structures.

17 Q. Next, "Furthermore, the listed bearer shares  
18 had hardly been traded for over a year with only very  
19 small sold lots and months of inactivity in between."

20 That's also consistent with your  
21 understanding?

22 A. Well, now here comes the problem with  
23 translation and I want to bring to your attention. If  
24 you read this sentence carefully. "Furthermore, the  
25 listed bearer shares had hardly been traded for over a

1 year." Had hardly been traded for a year -- that's not  
2 true. The company had been listed since 2015.

3 And this is why it's dangerous -- I'm sorry to  
4 be a nitpicker about this. It's dangerous to use these  
5 English translations if they're machine translations,  
6 because I'm positive that Felix didn't get that detail  
7 wrong, and that reads poorly.

8 MR. WORDEN: You're welcome to read the German  
9 if you want.

10 Q. (BY MR. RICHARDS) And I understand this to  
11 mean that for over a year, there had been little trading  
12 activity in the stock, and I think that's consistent  
13 with your prior testimony?

14 A. I don't want to comment on the text. I will  
15 say that that is consistent with my understanding of the  
16 facts.

17 Q. Okay. Next sentence, "For this reason,  
18 Euronext did indeed remove the listed bearer shares from  
19 trading, but at the same time invited the company to  
20 have the new registered shares listed."

21 Is that true?

22 A. It is. You can see it in the Euronext letter.  
23 I know there's been a lot of discussion about this to  
24 try and suggest that the place where it says you're  
25 welcome to reapply to another exchange seems to suggest

1 that there -- that that's not an invitation, but this is  
2 a problem, again, I think with language. There is no  
3 other exchange at the Euronext it's entitled to invite  
4 you to apply to. They're inviting you to apply to  
5 another Euronext exchange within -- I think it says  
6 90 days. That's from my memory, but I think that letter  
7 is exactly consistent. I don't think Mr. Kappeler is  
8 wrong about this at all.

9 Q. So let's mark Exhibit 125, which is the  
10 clearer version of that Euronext letter so that we can  
11 refer to it together.

12 (Exhibit D 125 was marked.)

13 Q. (BY MR. RICHARDS) Okay. Romanette i here in  
14 the Euronext letter Exhibit D 125 says that the Euronext  
15 was going to "refuse the admission to trading of the  
16 Class-B shares of AmeriMark Group AG on Euronext Access  
17 Paris, pursuant provision 2.7 of the Euronext Access  
18 Market Rules."

19 Do you see that?

20 A. I do, and this is a very important detail.  
21 This is Euronext. You see down here this is signed by  
22 the chairman of Euronext Paris and the head of  
23 compliance for all of France. What they're saying is  
24 that it's been denied for trading on the Euronext Access  
25 Paris, and there are multiple Euronext access exchanges

1 in this period -- is my understanding.

2 Q. So you -- and then we continue, "This  
3 provision allows Euronext to decline an application on  
4 any appropriate ground, including (without limitation),  
5 in case trading might be detrimental to the fair,  
6 orderly, and efficient operation of the Market or to the  
7 reputation of market and/or Euronext as a whole";  
8 correct?

9 A. Yes, that's what it reads.

10 Q. Okay. Mr. Kappeler here says that the  
11 Euronext invited the company to have the new registered  
12 shares listed; correct?

13 A. This decision is irreversible but allows you  
14 to ask admission and be admitted on another stock  
15 exchange within 60 days."

16 Euronext is not telling you to go list in  
17 Vienna. It's telling you to list on another Euronext  
18 exchange. If that's not an invitation, I don't know  
19 what is.

20 Q. Well, but that's Romanette iii, which pertains  
21 to the class "A" shares; correct?

22 A. I think you're splitting hairs beyond --  
23 beyond recognition. I'm sorry, Counsel.

24 Q. You think I should read Romanette iii when  
25 Romanette i says we're not going to admit the shares, I

1     **should read Romanette iii to say we're inviting you to**  
2     **admit the shares?**

3           A.     Allows you to ask admission to be admitted on  
4     another stock exchange within 60 days. Is that not an  
5     invitation?

6           And let's remember, also, you're dealing with  
7     the translation here, and you're dealing with Euronext  
8     writing in English when their natural language is  
9     French.

10          Look, I know the intimation you're trying to  
11     make. I just can't agree with it.

12          **Q.     So Mr. Kappeler continues here in his letter,**  
13     **three lines up from the bottom, "At that time, however,**  
14     **the company had already decided to focus on a listing on**  
15     **the Vienna Stock Exchange, not least because the**  
16     **delisting by Euronext was carried out unilaterally and**  
17     **without prior notice, which did not create good**  
18     **conditions for further cooperation."**

19          A.     See, now, the translation comes in again. The  
20     German reads. (Speaking in German). "Up to this point"  
21     as opposed to --

22                     (Reporter clarification.)

23          A.     This is "at that time." This says "up to this  
24     point," and I just -- I can't agree with you that this  
25     is inconsistent with the Euronext language.

1                   Also, let's remember, this is a lawyer  
2     interpreting a letter that he's seen once and passing it  
3     off. He's not making a formal representation. Also  
4     he's had to work through talking to whoever he needs to  
5     talk to about this in order to research.

6                   I just don't agree with you that it's  
7     inconsistent what Mr. Kappeler wrote, and I've looked at  
8     this issue extremely carefully, and I've talked to  
9     Mr. Kappeler about it. And, in fact, Wenzl came back  
10    and had some issues about the some of the disclosures --  
11    for example, the exact definition of "publish."

12                  And throughout this entire process,  
13    Mr. Kappeler -- don't think that this letter was in  
14    isolations or that it was sort of a monolith.  
15    Throughout this entire process, Mr. Kappeler had dozens  
16    of phone calls with Mr. Wenzl, and we worked diligently  
17    with Mr. Wenzl for weeks to resolve his issues, and  
18    eventually he let it go. To the extent -- this is  
19    October 31st, 2019 -- that in March of 2020, they're  
20    considering an up-listing, and for the second time,  
21    including Rymark employee John Kirkland, they're  
22    presenting to the full panel of the Vienna Stock  
23    Exchange.

24                  So, I'm sorry, Counsel, but I simply can't  
25    agree with the thrust of what you're doing.

1 Q. (BY MR. RICHARDS) Let's turn the page, Bates  
2 page 12401. The first question on this page is "Why was  
3 the listing/delisting at Euronext not mentioned to us?"

4 And Mr. Kappeler writes, "The company has  
5 prepared an information memorandum as thoroughly as  
6 possible with the assistance of a Capital Market Coach.  
7 Since the company did not seek the admission of the  
8 'old' bearer shares and intended to destroy them as  
9 quickly as possible and because the share information in  
10 the extract from the Commercial Register was publicly  
11 accessible, the company likely did not understand how  
12 important it would have been to disclose this fact. In  
13 retrospect, one must say that it was a mistake."

14 Do you see that?

15 A. I do. And it's a bit different than the  
16 German, but I'll tell you I helped draft this paragraph,  
17 and the discussion that we had about this was that we  
18 thought Wenzl, again, had egg on his face and that if we  
19 push the issue and suggested that he had made the  
20 mistake, rather than taking the small bullet and moving  
21 on, at least giving him a little bit of his due, then he  
22 was just going to get more defensive, more aggressive,  
23 so to speak.

24 I mean -- and this is a misrepresentation.  
25 The company hasn't prepared it as thoroughly as

1 possible. I actually don't think it's true, and we  
2 thought it was maybe not true that, quote -- let me find  
3 the section that gets me -- "to disclose this fact." I  
4 actually think that it was disclosed to Wenzl, and he  
5 just didn't mention it up the chain.

6 And, you know, the kind of relationship  
7 that -- my understanding -- that Wenzl and Coenen had at  
8 this period of time was that they were having lunch  
9 together once a week, and I don't know exactly how that  
10 happened, but I do remember discussing this, and I do  
11 remember talking about the fact that, look, they're the  
12 exchange officials, and they can use boilerplate all the  
13 time to just refuse you. Let's just kind of try to call  
14 bygones bygones, split it down the middle, and move on,  
15 which we did.

16 **Q. So you don't think Group made a mistake in its**  
17 **application. You're just trying to take a fall and get**  
18 **Wenzl off your back?**

19 A. I'm not sure it's accurate to say that there  
20 wasn't a mistake in the application. You know, I wasn't  
21 involved in the preparation of the application. I think  
22 almost all of that was Coenen, because if you look at  
23 the application and you look at it side-by-side with the  
24 later valuation report from June 17th, 2019, I mean,  
25 it's a lot of overlap.



1                   So I don't feel like it was just a  
2   seriously -- a serious mistake, but, you know, I might  
3   have been loquacious about the history of the company,  
4   but by the same token, you could also have seen it in  
5   Kappeler's right here. You could also have seen it in  
6   the public information, and he should have. Wenzl  
7   should have seen it in the public information.

8                   I just think he -- and this is only my  
9   opinion, and I'm basing it on speculation. I think he  
10   was probably a little closer to Coenen than he should  
11   have been, and then when somebody above him -- and he  
12   reports directly to more senior exchange officials --  
13   including -- by the way, the president of the exchange  
14   signs off on every listing -- CEO. Excuse me. I think  
15   it's the CEO of the Vienna Stock Exchange. I suspect  
16   that -- that he got called out and he said -- what they  
17   said, "Wait a minute. Isn't this the same?" And he  
18   didn't have an answer. Now, this is me speculating  
19   but -- and this is the speculation we had at the time.

20           **Q.    So if -- if -- and I understand you're**  
21   **speculating, but if upper exchange officials were**  
22   **alarmed by the fact that it was the same company that**  
23   **had just been delisted, doesn't that sound like the sort**  
24   **of material thing that should have been disclosed in the**  
25   **application?**

1           A.     Clearly the exchange officials didn't think  
2     so. They took this letter and moved on. Well, again,  
3     the company was applying for an uplisting and was, in a  
4     way, the darling of the exchange. It had, I think, the  
5     highest revenue of any company in the segment. Martin  
6     Wenzl said he didn't think it should still be in the  
7     direct. It should go up to the direct plus, which is  
8     what occasioned the meeting in March 2021. Does that  
9     sound to you like a bunch of super concerned exchange  
10    officials who maybe there was something that should have  
11    been disclosed that irritated them, but then they got  
12    past it?

13           **Q.     So you think that if a group had submitted the**  
14    **letter from Euronext that says Group was being delisted**  
15    **for market abuse and reputational risks, that Group**  
16    **still would have been listed with Vienna? It wouldn't**  
17    **have mattered?**

18           A.     How can I go into the minds of the officials  
19    and say what they would or wouldn't have done if they  
20    had or hadn't had a documentation -- a piece of  
21    documentation that that they didn't have. I mean, how  
22    do you me to speculate that?

23                   They obviously didn't think that much of it  
24    later. They were fully in their power to delist the  
25    company in that particular moment for -- for not doing a

1 proper application. They chose not to. The reverse --  
2 they wanted to push the company up the next change.  
3 Again, I'd reiterate it. I'll say it again. Does that  
4 sound to you like a bunch of concerned exchange  
5 officials?

6 All these -- all these are messy. These are  
7 small companies. This company had been through the  
8 ringer twice. There's a lot of deal fatigue to this,  
9 and it happens. You'll always have that sort of thing.  
10 The exchange obviously got over it -- more than got over  
11 it.

12 Q. I'm going to mark Exhibit D 126.

13 (Exhibit D 126 was marked.)

14 Q. (BY MR. RICHARDS) I've marked as Exhibit D  
15 126 an email from Alexander Coenen to Martin Wenzl dated  
16 November 4th, 2019.

17 Do you see that?

18 A. I do.

19 Q. Email is in German. There is a translation  
20 attached to the back. If you'll go to the English page  
21 with the Bates stamped 3151.

22 A. I'm there.

23 Q. You've made your concerns with translations  
24 clear on the record.

25 A. Thank you for acknowledging that.

1 Q. Let's actually turn one more page, 3152.

2 A. Thanks for the Bate numbers -- Bates Numbers.  
3 It makes it easier.

4 Q. Do you see at the bottom of this page that  
5 there's an email from Mr. Wenzl and Mr. Coenen?

6 A. I do.

7 Q. And Mr. Wenzl says, "Dear, Mr. Coenen. The  
8 company is now legally represented, and we are already  
9 in communication regarding the questions below."

10 I gather this is a reference to the fact that  
11 Mr. Kappeler had been communicating with Mr. Wenzl. Is  
12 that your understanding?

13 A. You're making me speculate on what Mr. Coenen  
14 means here, but certainly by this date I think  
15 Mr. Kappeler was corporate counsel for the company.

16 Q. Yeah. And I'm sorry. I may have misspoken.  
17 This email that we're looking at now is from Mr. Wenzl;  
18 correct? Not from Mr. Coenen?

19 A. I'm at the bottom, but it says -- I don't know  
20 what Mr. Coenen said -- oh, I see. Wenzl is  
21 representing to Coenen the company has represented.

22 Well, again, I don't know what Wenzl means  
23 here. I will tell you that my understanding is the  
24 company was represented at this point.

25 Q. Okay. Next paragraph. This is Mr. Wenzl's

1 writing to Mr. Coenen.

2 A. Next paragraph. I have it.

3 Q. "For our further corporation, we must clarify  
4 why you did not mention the history of the company,  
5 including the delisting at Euronext, to us. I kindly  
6 request a statement regarding this."

7 Do you see that?

8 A. I do.

9 Q. And then I believe that Mr. Coenen's response  
10 is actually at the top of this same page. Do you see  
11 the line that begins "The publicly accessible history"?

12 A. Yes.

13 Q. Do you see that? "The publicly accessible  
14 history has in this case escaped both Capital Lounge  
15 GmbH and the Vienna stock exchange"?

16 A. Yes.

17 Q. So he's saying, "Look, I didn't know either.  
18 You and I both missed it"? Is that the idea?

19 A. Read that part one more time. I'm sorry.

20 Q. "The publicly accessible history has" --

21 A. Sorry. Where are we?

22 Q. Same, 3152.

23 A. Thank you. I'm there.

24 Q. Go to the top of the page. There are two  
25 lines.

1           A.    I see.  You jumped up.  That's where I missed  
2   you.

3           **Q.    Yeah.  Sorry.**

4           A.    Go ahead.  "The publicly accessible history  
5   has" --

6           **Q.    -- "in this case escaped both Capital Lounge**  
7   **GmbH and the Vienna Stock Exchange."**

8           A.    And this is him to Wenzl.

9           **Q.    Coenen to Wenzl, correct.**

10          A.    Okay.

11          **Q.    So do you understand Mr. Coenen to be saying**  
12   **here, "I missed it too"?**

13          A.    I think it's important to realize who's carbon  
14   copied on this.  Do you see that?  Susanne Plank.

15          **Q.    Who is she?**

16          A.    Susanne Plank is also a member of the  
17   executive committee -- I think it's the executive  
18   committee -- of the exchange, and Susanne Plank  
19   reports -- my understanding, she reports directly or  
20   reported directly to the CEO.  It's instrumental here, I  
21   think, to understanding this, and I've looked at this  
22   correspondence before, that Plank is in here, because I  
23   take every piece of this to look like Wenzl trying to  
24   clear his name with his upper officials.  He's writing  
25   to a Coenen, who is a friend of his -- they're

1 colleagues. They have lunch all the time. They are  
2 more than friends -- in very formal language and  
3 copying, effectively, his boss Susanne Plank.

4 This is another reason I came to the idea that  
5 something had happened above and Mr. Coenen, for lack of  
6 a better term, had gotten spanked or slapped on the  
7 wrist. And this -- now, the elaborate dance between  
8 these two friends is a way of trying to both of them  
9 take the bullet in front of Susanne Plank.

10 And then notice that Wenzl complains about the  
11 way that the -- the -- that the CC list is being  
12 distributed; right? If you see that on -- I'm sorry --  
13 Bates number ending 3153. Mr. Wenzl to Mr. Coenen  
14 copied Plank and the director. "Thank you for the  
15 response. Since you have accompanied the company in the  
16 listing process... concern you, please keep the email  
17 distribution as it is [sic]."

18 This is a sensitive spot for these people.  
19 There's a mistake that's been made. The exchange  
20 certainly got upset with Wenzl. This is the process of  
21 walking it all back internal politics at the Vienna  
22 Stock Exchange. That's my assessment, especially having  
23 been a little bit around this with talking to  
24 Mr. Kappeler and especially after reviewing this  
25 material in the course of this litigation.

1 Q. All right. So I want to --

2 A. Excuse me. Just a second. I'm sorry.

3 Q. Bless you.

4 I want to return to some -- some of that in a  
5 moment. I want to clear up the CC issue first.

6 A. Of course.

7 Q. So let's turn to 3154.

8 A. 3154.

9 Q. The first email in this chain is from  
10 Mr. Coenen to Mr. Wenzl copying Mr. Colshorn; correct?

11 A. 3154?

12 Q. Yeah.

13 A. From -- I see at the top here. From Wenzl.

14 Q. Sorry. Go to the bottom of this page, which  
15 will be the original -- the earliest email.

16 A. From Coenen. I have that. To Wenzl. Copied  
17 Colshorn. Agreed.

18 Q. So Coenen to Wenzl, copied Colshorn. And then  
19 Mr. Wenzl's response four days later on the 21st of  
20 October is above; correct? We just move up that same  
21 page.

22 A. Yes, I have it.

23 Q. And it's Mr. Wenzl who adds Ms. Plank?

24 A. Correct.

25 Q. So I'm not quite sure I follow the idea that



1     **Mr. Wenzl is concerned that Ms. Plank is copied here if**  
2     **he put her in there.**

3             A.     No. It's the reverse.

4             **Q.     Okay.**

5             A.     He wants his boss to see that this is -- that  
6     this is being resolved.

7             **Q.     Okay.**

8             A.     He's clearing his name with his boss. I'm  
9     sorry if I -- I didn't make that more clear, and -- and  
10    I think you noticed it. Coenen is trying to take her  
11    off because he's being accused of something. He  
12    wants -- you know, he wants it to be Wenzl and himself  
13    and the director, and Wenzl's like, "No, no, no. You're  
14    putting my boss on here too because I want to hear you  
15    say you made a mistake," or whatever the politics is  
16    there.

17            I mean, to me it's as clear as day. It's an  
18    internal tiff, and I did call him the golden boy of the  
19    exchange. I mean, he was very close. This formal kind  
20    of stilted language with all these details and now the  
21    company is represented by counsel to his old friend with  
22    his boss in carbon copy that his boss refuses to let out  
23    of carbon copy. I think it's clear as day what's going  
24    on.

25            **Q.     Okay. So let's now return to Bates 3152.**

1 A. I'm there.

2 Q. And go to this line near the top -- the  
3 publicly accessible history. Do you see where I mean?

4 A. 3152. I'm on the German. You're probably on  
5 the English.

6 Q. I'm on the English.

7 A. I'm sorry. Let's go.

8 3152. The publicly accessible history. I  
9 have it.

10 Q. So I read this to -- as being Mr. Coenen  
11 saying, "You missed this, and so did I," and I gather  
12 you to suggest that he's basically trying to help  
13 Mr. Wenzl save face in front of his boss. Is that the  
14 idea?

15 A. I mean, again, I'm speculating, but I think  
16 I'm very close on that, and it matches exactly what's  
17 happening here, and notice how he -- notice how he talks  
18 about the mistake. "The publicly addressable  
19 history" -- like, "boy, we both should have known  
20 better"; right? Is my interpretation of that. He's  
21 talking, I'm certain, about the extract from the  
22 commercial register, not -- not -- in a way, pointing  
23 out, "You should have looked at that first," and Wenzl  
24 should have but --

25 Q. But Mr. Coenen --

1           A.    All of this, by the way, is happening outside  
2   of the view of the company except when Coenen --

3                               (Reporter clarification.)

4           A.    All of this is happening outside the view of  
5   the company except when Coenen is in copy -- but then I  
6   was going to correct myself. Look, he's in copy  
7   actually in most of this. So I'm wrong about that.

8           **Q.    Colshorn is in copy, you mean?**

9           A.    That's what I meant. Again, it's been a long  
10   couple days.

11          **Q.    So is Mr. Coenen telling the truth here,**  
12   **though, in that the publically accessible history did,**  
13   **in fact, escape him, Capital Lounge GmbH?**

14          A.    I don't know. I don't actually know what  
15   Capital Lounge knew. I don't know what the Vienna Stock  
16   exchange knew. Again, I think -- I think probably --  
17   and look at the language here. "Has escaped." Let me  
18   see what the German is on this because -- 315.

19          **Q.    3152.**

20          A.    Yeah. My German is not perfect but [starts  
21   speaking in German] -- I'm not going to read it out  
22   loud. How about that?

23          **Q.    Sure.**

24          A.    It's even beyond my German a little bit. It's  
25   very nuanced. So I don't know. But, again, it's

1 entirely consistent with trying to, with Susanne Plank  
2 in copy, eventually trying to just say it was out there.  
3 Yeah, you should have seen it, and maybe he's saying  
4 that -- is he going to say, "Hey, Martin, you screwed  
5 this up. I had it. I gave it to you"? You know,  
6 again, all of this is speculation. I'm happy to  
7 speculate on it to try and add the color to the general  
8 transaction, but I don't know what they were thinking at  
9 the time. I have no idea.

10 Q. I'm going to mark Exhibit D 127.

11 (Exhibit D 127 was marked.)

12 Q. (BY MR. RICHARDS) See here, Mr. Bernhardt,  
13 that this is a May 16th, 2019, email from Mr. Leshem to  
14 a number of individuals. Yes?

15 A. I do.

16 Q. And the email begins, "To the director,  
17 officers, shareholders, service providers, and creditors  
18 of AmeriMark Group SA."

19 A. Yes.

20 Q. "Pursuant to the efforts of Mr. Orie Rechtman,  
21 shareholder and founder of AmeriMark Group AG, I have  
22 had a preliminary discussion with Mr. Alexander Coenen,  
23 the listing sponsor who was originally listed 4Service  
24 Cloud Tech on the Euronext and who was engaged to list  
25 AmeriMark Automotive on the Euronext."

1                   Next paragraph. "Mr. Coenen was made aware of  
2   our recent rejection to admission by the Euronext and  
3   discussed our situation and explained our current  
4   structure. Mr. Coenen had already completed several  
5   listings on the Vienna Direct and the Vienna Direct  
6   Plus. He has expressed confidence that he can assist us  
7   in gaining admission to that market and is willing to  
8   work on a success basis and be compensated after funds  
9   are raised."

10                  So it appears from this email to me that  
11   Mr. Coenen did know that Group had been rejected, that  
12   the admission of 20 million shares of Group had been  
13   rejected by the Euronext. Yes?

14                         (Cross-talk. Reporter interrupts.)

15                  MR. WORDEN: Objection. Calls for  
16   speculation.

17                  A. Yeah. You're assuming what Mr. Leshem is  
18   saying here is accurate, and I don't know it is, and I  
19   don't know what the source of his information on this  
20   is. He could just be wrong. How do I know?

21                  Q. (BY MR. RICHARDS) Do you find Mr. Leshem  
22   trustworthy?

23                  A. In this case I don't have any reason not to  
24   think he's trustworthy at this period in time, no, but  
25   how would I know whether he just simply made a mistake

1 here? He's describing a complicated sequence of events.  
2 I have no idea. I'm not going to speculate on that.

3 **Q. At this period of time, Capana was funding the**  
4 **listing effort; correct?**

5 A. That is -- I don't know that that's totally  
6 accurate. I have to think about the time frame. This  
7 is May 2019. No. Capana didn't even exist at this  
8 moment. I'm sorry.

9 **Q. Okay. Orbital --**

10 A. Made it very -- made it very difficult for  
11 Capana to fund the company in that instance.

12 **Q. Was Orbital funding the company at this stage?**

13 A. I can't remember exactly what the funding all  
14 was here, and the Orbital material wasn't something I  
15 paid all that much attention to for this deposition.

16 **Q. Do you know whether -- you know, Mr. Leshem**  
17 **says here that Mr. Coenen would be -- was willing to**  
18 **work on a success basis and be compensated after funds**  
19 **are raised. I gather the idea is he's not going to take**  
20 **a fee now. He'll take a fee out of share sales on the**  
21 **back end; is that right?**

22 A. Again, you're asking me to speculate exactly  
23 what Mr. Leshem meant by this, and I don't know. I  
24 mean, I can take the plain meaning of it. I'm not  
25 actually aware that Mr. Coenen had a backend on this. I

1 haven't seen anything like that in the production. I  
2 don't know what Mr. Leshem is referring to here.

3 Q. Have you seen any fees to him on the front  
4 end?

5 A. I have not. I'll take that back.  
6 Mr. Coenen?

7 Q. Yeah.

8 A. Well, certainly, he was paid early on -- maybe  
9 not on this transaction -- but certainly he was paid and  
10 retained in his capacity of Capital Lounge, because he's  
11 been retained by Capital Lounge basically with the same  
12 company since 2016 when he was retained by  
13 Mr. Markosian.

14 So how the payment went, I don't know. It's  
15 also possible that Mr. Leshem, as the -- as the listing  
16 agent, was paying him directly. I think that's the more  
17 likely case because Mr. Leshem's fee structure -- my  
18 understanding was that he accepted fees from Rymark in  
19 order to do the listing, and he was responsible for  
20 these expenses. I do think that he probably pay -- I'm  
21 almost positive he paid Capital Lounge out of his own  
22 money in the AmeriMark Automotive transaction because  
23 Automotive didn't have any bank account until it was  
24 formed; right? And certainly didn't have really any  
25 cash injected into it until -- until later.

1                   So I expect that probably that's where the  
2     payment went. I haven't seen any direct payments to  
3     Capital Lounge or Mr. Coenen in the company's records  
4     that I can remember at the moment.

5           **Q.     When did the money for Mr. Markosian run out?**

6           A.     I don't know the answer to that question  
7     because that's a question you would have to ask Ananda  
8     Capital and then its successor. Mr. Markosian's  
9     arrangement and the 125,000 was with them and  
10    Mr. Hesterman. I mean, I've seen production about  
11    Mr. Markosian's complaints on the matter, But that's  
12    secondhand.

13          **Q.     All right. You can put that one to the side.**

14          A.     What I will tell you is by this time, we're  
15    looking at May 2019, the solvency issues of the company  
16    by which I mean AmeriMark Group, were getting severe.  
17    That's why Mr. Leshem wrote this email. Mr. Markosian  
18    had starved the company of money, and by the way, just  
19    as a reminder, stolen dividends. So if that money had  
20    been put in the company, it would be in much better  
21    shape at that point.

22                   MR. WORDEN: Stephen, let's take five, please.

23                   MR. RICHARDS: That's fine.

24                               (Recess taken from 1:49 to 2:04.)

25          **Q.     (BY MR. RICHARDS) I'd like to mark as**



1 Exhibit 128.

2 (Exhibit D 128 was marked.)

3 Q. (BY MR. RICHARDS) Mr. Bernhardt, you have in  
4 front of you what I have marked as Exhibit D 128.

5 A. I see that.

6 Q. This is an information memorandum from  
7 AmeriMark Group; correct?

8 A. An information document, yes.

9 Q. Dated June 2019. Is that what you see?

10 A. I do see that.

11 Q. And I'll make it clear. This is excerpts from  
12 the document, the document is --

13 A. I was going to note just now that doesn't seem  
14 to be complete.

15 Q. It's very large, the whole thing. I only want  
16 to ask about a few sections.

17 This was attached to Mr. Coenen's email to  
18 Mr. Wenzl that we just reviewed.

19 A. I'll take your representation on that.

20 Q. I'd like to start on Bates 3161.

21 A. Thanks for the Bates number. I have it.

22 Q. Paragraph 1.1, "Person in charge of the  
23 information document." Nicolai Colshorn is listed here  
24 as the person who assumes responsibility for the  
25 completeness and truthfulness of the data and

1 information contained in the information docket."

2 Do you see that?

3 A. I do.

4 Q. I don't see a signature on this one. Is it  
5 your understanding that Mr. Colshorn did sign the -- the  
6 document that was submitted?

7 A. The original -- sorry to interrupt you. Do  
8 your question again. That was my fault.

9 Q. Is it your understanding that Mr. Colshorn did  
10 sign the information document that was officially  
11 submitted to the Vienna Stock Exchange?

12 A. The officially submitted stock exchange  
13 document would have had to have been the hard copy with  
14 wet signature. It is my understanding that it should  
15 have been Mr. Colshorn, but we don't have that document  
16 in production. The exchange would have.

17 Also, I'm going to represent to you -- point  
18 out to you, this is a draft document, even the extras  
19 you have here. This is a draft version. You can see  
20 right there under the one two statement, the  
21 responsibility, the date and the highlight. This is a  
22 draft document.

23 Q. Let's go to 3162.

24 A. 3162 -- oh, Bates number. I asked for them,  
25 and then I don't comply. 3162. I'm there.

1 Q. Do you see paragraph 1.6?

2 A. I do.

3 Q. European markets advisor?

4 A. I do.

5 Q. And Mr. Hueser's name is put there, yes?

6 A. I see that also.

7 Q. Did you speak with Mr. Hueser in preparation  
8 for today's deposition?

9 A. I tried to reach Mr. Hueser and was unable.  
10 So, no, I did not.

11 Q. Was he, in fact, the European markets advisor  
12 for AmeriMark Group during the time period of June 2019?

13 A. Mr. Hueser was added as a formal officer of  
14 the company AmeriMark Group as manager, and I don't know  
15 exactly what the date of that was, but it will certainly  
16 be on the Commercial Register file. He was an officer  
17 and the director of AmeriMark Group. Whether or not he  
18 was -- and, again, though this document says it's dated  
19 June 2019, I'm not sure exactly when it was printed, and  
20 I'm not sure which draft this is. This is a draft  
21 document. It's possible that Mr. Hueser's name was  
22 removed later.

23 Q. What were Mr. Hueser's responsibilities as  
24 European markets advisor?

25 MR. WORDEN: Calls for speculation. You can

1 answer.

2 A. It does call for speculation, but also, as I  
3 pointed out, it says European markets advisor here. It  
4 doesn't mean he was. This is a draft document. I don't  
5 know what the original said. I'm happy to talk about  
6 his responsibilities, but let's be careful about this  
7 European markets advisor term, shall we.

8 Q. Sure. So was he or was he not the European  
9 markets advisor for AmeriMark Group?

10 A. I don't know that title.

11 Q. Okay. What were his responsibilities with  
12 respect to AmeriMark Group?

13 A. Mr. Hueser was a consumer finance specialist,  
14 and I believe that he came through Mr. Leshem when  
15 Mr. Leshem was looking for somebody who would be able  
16 to --

17 Just -- excuse me for just a second. I'm  
18 sorry.

19 -- looking for somebody who would be able to  
20 take the Markosian formula and translate it into  
21 something that worked in Europe. Mr. Hueser, initially,  
22 I think approached this as an entrepreneurial project.  
23 It wasn't really clear what we were going to do. I wish  
24 I had, actually, in front of me the commercial registry  
25 entry so I could tell when he officially became an agent

1 because then I could use that as an anchor to tell you  
2 kind of how his responsibilities evolved.

3 But in any event, the first kind of issues  
4 that I think we were thinking about when it came to what  
5 would be -- European operations were, (a), you love to  
6 borrow money in Switzerland. I mean Swiss finance is  
7 borrowing money in Switzerland and borrowing it  
8 extremely and expensively. It's fantastic. So our  
9 first idea before encountering Mr. Hueser was that we  
10 would use Swiss financing to basically replicate what  
11 Rymark was doing with APG Financial or something like  
12 that. I'm not sure exactly how it would have worked.  
13 I'm not sure we would have had a captive finance  
14 company.

15 And at the very beginning, of course, right  
16 after the listing here, the listing being in August,  
17 finally completed in August. At the very beginning,  
18 these were sort of nascent concepts. The kind of  
19 preference that was expressed by the exchange to have  
20 some kind of European connection was expressed by  
21 Mr. Wenzl either towards the end of the listing process  
22 or maybe afterwards. I don't actually remember.

23 But in any event, we took it seriously, and  
24 Mr. Hueser's first kind of task was to figure out how  
25 could we use Swiss financing to do this, and what

1 structure would you use? For instance, would you simply  
2 lend money from a Swiss bank, Credit Suisse still in  
3 existence at the time, into AmeriMark Group and then use  
4 that as directly to a subsidiary? Would the subsidiary,  
5 if you need one operating in Europe, borrow money  
6 directly? So this is a question that we didn't really  
7 have any way to know about, and one of the reasons  
8 Mr. Hueser was brought on board, my understanding, was  
9 to plug in to consumer credit expertise. Excuse me  
10 again. I'm sorry.

11 What emerged -- and we didn't know it at the  
12 time -- is that the consumer finance infrastructure,  
13 regulatory infrastructure in Europe and in particularly  
14 Germany is incredibly stringent. We didn't know that  
15 until Mr. Hueser described it. It was supposed to be  
16 his area of expertise, and I think, you know, he proved  
17 that it was.

18 And one of the things that he pointed out very  
19 early on was there would have to be a German entity. My  
20 understanding is that he went around and had a number of  
21 talks with a number of organizations. He started  
22 writing reports. I think the first one is from the end  
23 of 2019. And in the reports, he describes talking with  
24 people, potential partners both in the finance side and  
25 on the buying cars side, the infrastructure side -- I

1 guess I should call that the inventory side -- that  
2 these partners in Germany would want to deal with other  
3 German entities. The reason being that as soon as you  
4 start cross-border financing, it gets incredibly  
5 complicated from a regulatory perspective.

6 And so, also, you'd have non, you know, sort  
7 of matching regulatory regimes, a Swiss regulatory  
8 regime in the Ukraine Union and Germany. So one of the  
9 first tasks that he had was to form a company in Germany  
10 that could address this, and this was not our idea  
11 particularly. It was Mr. Hueser's idea.

12 Mr. Hueser also did, early on, quite a lot of  
13 research on exactly what the Markosian formula --  
14 translated Markosian formula would look like. So he  
15 came up with some really interesting ideas. The one is  
16 immobilization. He came up with the idea -- I don't  
17 know if he came up with the idea, but he proposed the  
18 idea that a way to deal with impoundment, repossession  
19 risk, was to be able to remotely immobilize a vehicle.  
20 I don't think that's all that sophisticated in 2019,  
21 2020, but, you know, we hadn't really thought about it,  
22 and I think Rymark at least does it now, you know, or at  
23 least uses GPS tracking to minimize repossession risk.  
24 So that was really kind of a mirror, you know, of the  
25 concept. I don't know if they actually strictly do

1 immobilization.

2           In his reports he describes talking to  
3 Santander Bank about doing financing, and the problem  
4 with Santander Bank, according to Hueser, is that their  
5 kind of credit scale -- I don't know that the court  
6 reporter can see what I'm doing -- the credit scale was  
7 higher; so the floor of credit was higher. They don't  
8 really have FICO scores in Germany. They do have some  
9 kind of credit ratings. And so I don't know the exact  
10 specifics of how credit is rated, but there was  
11 definitely a perception that Santander was sort of not  
12 going to do the kind of business that Rymark was going  
13 to do, but Hueser came up with an idea to solve that  
14 problem.

15           And when I say this, every time, you know, I  
16 go along and I talk about the entrepreneurial kind of  
17 bent to Mr. Hueser, I'm talking about this, you know,  
18 this idea that -- and by the way, he was paid very  
19 little money at the beginning -- I think almost nothing  
20 in the beginning and eventually later, you know, quit  
21 because he wasn't being paid at all. We'll get to that  
22 later maybe.

23           But so continuing to his responsibilities, he  
24 came up with the idea or at least transplanted the idea  
25 from somewhere of the credit improvement, which I think



1 is also a Rymark concept. I remember seeing, you know,  
2 an executive business summary in production in a Word  
3 document came from Mr. Markosian, Mr. Hesterman, that  
4 was specifically to sort of fill in the business plan  
5 pieces of -- of the applications, and that included this  
6 kind of long description. And I found a lot of that  
7 stuff translated sort of into a European Union German  
8 sense. So that was part of his responsibility.

9 And he didn't -- I didn't report to him. He  
10 didn't report to me, but that was definitely kind of the  
11 pattern that he was going to translate the Markosian  
12 ideas into Markosian formula, which had been, you know,  
13 prominent on the AmeriMark website for instance into the  
14 European sphere.

15 So when Santander gave his floor concept,  
16 Hueser came up with the credit enhancement idea. Okay.  
17 well, then, we need -- we, AmeriMark, whichever entity  
18 it would be because there was three eventually when he  
19 formed AmeriMark Deutschland GmbH -- these entities  
20 would then sort of service this market, and Santander  
21 was apparently very interested in allowing the upside of  
22 that -- like the trade up into Santander's --  
23 Santander's financing portfolio. So it was almost like  
24 an entry level outside provider AmeriMark would be to  
25 fill in Santander's profile by improving the credit of

1 AmeriMark customers in Europe.

2 The other thing that he was responsible for  
3 doing -- and, you know, by the way, you read his  
4 reports, and he reports in great and exact detail. Even  
5 talking about renting offices, he had the address for  
6 the offices he was potentially going to rent, and I  
7 don't remember what they were, but they were in Germany.  
8 I think he was near Hamburg.

9 He was then also obviously going to have to  
10 deal with how to acquire inventory and so, apparently,  
11 had conversations with two or three Mercedes-Benz  
12 dealers. Over here, of course, we think  
13 Mercedes-Benz -- oh, it's a luxury car. Germany,  
14 Mercedes-Benz is a Ford; right?

15 So that actually was pretty interesting, and  
16 he had gotten some good traction on that. He also was  
17 going to be responsible for some kind of integration  
18 between all these pieces, and to this extent he talked  
19 both to Santander -- and I thought there was another  
20 bank too, a German bank, but it's in his reports, but I  
21 don't remember it offhand. But Santander was extremely  
22 interested in connecting them with the portal.

23 So now you've got kind of the concept. Down  
24 here. Let's feed Santander -- Santander's conversations  
25 feature all over his reports, which span, I think, 2019

1 to 2021. I think there were three or four detailed  
2 reports.

3 So then that would fill from here up into  
4 Santander, and then Santander had a financing portal  
5 also. It wasn't clear to me always what the connection  
6 there was going to be, and then the other side, of  
7 course, is inventory. He describes meeting with ALD  
8 Leasing.

9 ALD Leasing is one of the largest leasing  
10 operations in -- on the continent of Europe for sure.  
11 Today, they have something like 200 to 220,000  
12 automobiles in inventory, and the last I looked, their  
13 revenue from 2023 is 1 billion euro. Also -- and this  
14 has been a bone of contention between the parties for  
15 some period of time. ALD Leasing has some very  
16 interesting pair of partners.

17 (Reporter clarification.)

18 A. ALD has a very interesting pair of partners --  
19 Mobile.de and AutoScout24. So the responsibilities that  
20 he had were essentially to craft all of that, and those  
21 responsibilities evolved from come up with the concept,  
22 make reports, to eventually implementation, which, of  
23 course, never happened.

24 Now, in addition to that -- and it does say  
25 here that he was connected to the listing process;

1 right? He's in this information document. He met twice  
2 in person with the entire listing committee at the  
3 Vienna Stock Exchange. His first meeting he describes  
4 as being three to four hours, and his second meeting --  
5 which took place when John Kirkland, as I mentioned  
6 earlier in this deposition, was presenting to the same  
7 people in face time and realtime -- took something like  
8 four hours. He'd fly on his own dime out there to have  
9 those meetings.

10 By the way in those meetings -- sorry to say  
11 it again -- but in the second meeting, Whitetree Capital  
12 is the largest single shareholder. AmeriMark Group was  
13 repeatedly mentioned in John Kirkland's presence because  
14 the exchange was in interested in WhiteTree capital, it  
15 being the largest shareholder. That was Frank Hueser's  
16 role.

17 And, honestly, if you read his reports and  
18 look at the details, he talks about places, names,  
19 companies he's talked to, what the discussion was, what  
20 they were interested in, what they weren't interested  
21 in. That was his role, and those were his  
22 responsibilities.

23 **Q. And, eventually, he quits because he's not**  
24 **getting paid; correct?**

25 **A.** Around 2021 or 2022. And then I can't

1 remember when he came immediately off the commercial  
2 register, but eventually he was off the commercial  
3 register as well.

4 **Q. Why wouldn't Capana just pay him?**

5 A. Well, at that point you have to remember,  
6 Mr. Markosian had written the false letter of  
7 September 16, 2020. Mr. Hueser continued to work on,  
8 but certainly an expansion at that point when you're  
9 trying to sort of save your company and get  
10 Mr. Markosian and the other defendants to come to their  
11 senses is a tough thing to do.

12 And I have to point something else out. I  
13 don't believe anymore that Mr. Markosian ever intended  
14 to help fund the European expansion. I think if he --  
15 if he had -- and he certainly knows what that means, and  
16 he has an able chief operating officer in John Kirkland.  
17 He knew what it was going to take to do that expansion.

18 You asked why didn't Capana fund it? Why  
19 didn't Mr. Markosian? And at the same time, you know,  
20 we're putting fires out in the company at this point.  
21 Mr. Markosian has left a trail of debt, you know, quite  
22 wide in tax liabilities and everything else. I'm amazed  
23 Mr. Hueser held on as long as he did. I'm glad that he  
24 did, but I'm amazed.

25 **Q. The Mobil.de and AutoScott24 press releases**

1 that you and I have looked at before came many months  
2 after Mr. Pehrson's September 20th letter; right?

3 A. They did, evidencing Mr. Hueser continuing to  
4 work.

5 Q. You can put that one to the side.

6 (Exhibit D 129 was marked.)

7 Q. (BY MR. RICHARDS) Mr. Bernhardt, you have in  
8 front of you an email chain dated November 2019;  
9 correct?

10 A. Yes. And I recognize this chain.

11 Q. So let's start on Bates page 7455. Do you see  
12 where I mean?

13 A. I do.

14 Q. The bottom email on this page is from  
15 Mr. Leshem to Mr. Colshorn dated November 4th. Do you  
16 see that?

17 A. I do.

18 Q. And the subject is AmeriMark open issues; yes?

19 A. It is.

20 Q. And Mr. Leshem says, "Dear Nicolai. AmeriMark  
21 is still getting some questions from Vienna Borse.  
22 Would it be possible simply to have your office answer  
23 their number in German as AmeriMark and simply take  
24 messages? This is important to the exchange. Right now  
25 it goes to an English voicemail."

1                   **Do you see that?**

2           A.     I do.

3           **Q.     Why was it important to the exchange to have a**  
4   **number be answered in German as AmeriMark?**

5                   MR. WORDEN:   Calls for speculation.

6           A.     It does call for speculation.   I don't know  
7   exactly what the exchange -- why that was particularly  
8   important.   I could guess, but I'd rather not.

9           **Q.     (BY MR. RICHARDS)   And I think you just**  
10   **described the exchange at least having a preference that**  
11   **listed companies have a European presence; is that**  
12   **right?**

13          A.     That's not what I testified.   I had said that  
14   they had a preference specifically for AmeriMark and  
15   that the preference was expressed, I think, by Martin  
16   Wenzl anecdotally.   I don't think it was for listed  
17   companies.   In fact, there's several listed companies I  
18   believe even today that don't have European operations.

19          **Q.     Well, and the Vienna Stock Exchange was under**  
20   **the impression that AmeriMark was at least pursuing**  
21   **business opportunities in Europe; correct?**

22          A.     Well, in what time period are we talking about  
23   now that Vienna had this impression?

24          **Q.     November 2019.**

25          A.     Well, I can't see that from this email.   This

1 email is talking about a phone being answered in German,  
2 not an impression of European anything.

3 Q. Why would it have been a problem to just have  
4 the phone answer in English?

5 A. Well, why would it be English when it's a  
6 Swiss company? English is not an official language in  
7 Switzerland.

8 Q. Mr. Colshorn replies, "Dear Miron, yes, please  
9 let me know what we shall do."

10 And then Mr. Leshem proposes, moving up the  
11 page, "Just have the number answer during regular  
12 business hours by someone in your office in German  
13 saying, 'Good day. AmeriMark Group AG. How may I be of  
14 assistance?' Then they can take a message. If asked  
15 about management, they can say that Herr Frank Hueser is  
16 in charge of European operations and will return the  
17 call."

18 Did you discuss this plan with Mr. Leshem at  
19 the time?

20 A. I don't know if I discussed him -- with him  
21 this in November of 2019. I might have. Certainly the  
22 issue of infrastructure came up. Part of this emerged  
23 from the fact that the Vienna Stock Exchange, when they  
24 started getting more interested in the company, they  
25 came closer to the company, and when there were problems



1 with the company -- wanted to have infrastructure that  
2 didn't cause anybody calling us to then call them and  
3 say, "I'm not sure who I was able to talk to."

4 Mr. Wenzl was starting to -- I think maybe  
5 it's not until later that Mr. Wenzl starts getting  
6 purported investor emails and such and such, but he made  
7 a good point. And the information document makes it  
8 very clear that AmeriMark Group is a -- is a holding  
9 company for -- for operating subsidiaries. So it wasn't  
10 expected at the very beginning. I don't recall. The  
11 idea that eventually there would be an expansion of the  
12 Markosian formula into Europe was an aspirational and  
13 forward looking.

14 But, yes, certainly you do want someone that's  
15 trying to reach the company or there's somebody who's  
16 interested in the posted information memorandum or the  
17 valuation report, you definitely want somebody to  
18 answer. And I remember at the time that Mr. Colshorn --  
19 mostly all his business -- the numbers would forward  
20 sort of direct to his cell phone. So what's being asked  
21 here that AmeriMark should have really its own presence  
22 seems quite reasonable to me.

23 Q. Now, let's turn to Bates 7454.

24 A. I'm there.

25 Q. And the first complete email on this page is

1 from Mr. Leshem to Mr. Colshorn. Do you see that?

2 A. I do.

3 Q. And Mr. Leshem says, "Yes, correct, but I  
4 expect very few calls. We just need to make sure that  
5 when Wenzl checks, everything is correct."

6 What does that mean?

7 A. Well, exactly what it says. Mr. Wenzl is  
8 checking boxes. Like, look, you know, the company needs  
9 to have its own phone number, no matter what it does, no  
10 matter how much it's doing. We should have its phone  
11 number so when he checks, he can check his box.

12 Q. But the company didn't have its own company  
13 phone number; correct?

14 A. No. I just think I testified that at this  
15 point Mr. Colshorn was getting these on his cell  
16 phone -- that they were forwarding -- there may have  
17 been, like, a general Econ commercial company phone  
18 number, and I think -- this is -- this is just my vague  
19 memory on this. This isn't something that I studied for  
20 this deposition, but my memory of it is that, generally  
21 speaking, if you call the main office, you get  
22 Mr. Colshorn's phone -- cell phone -- or perhaps  
23 Ms. Kuster would answer. There were a couple of other  
24 employees in there too. But Mr. Wenzl made a good  
25 point. This is now -- what -- November? So the

1 company's been listed for a few months. It should have  
2 its own phone number.

3 Q. And the phone number needs to be in German?

4 A. Well, the answer should be in German. It's a  
5 Swiss company. English, as I already testified, not an  
6 official language in Switzerland.

7 Q. And everything is correct. Why would it be  
8 incorrect to have a phone number answered in English?

9 A. I don't think that's what this is saying. I  
10 think -- is correct -- I mean, the word "okay" is -- you  
11 know, originally stands for "all correct." Everything  
12 is correct.

13 Q. You can put that to the side.

14 (Exhibit D 130 was marked.)

15 Q. (BY MR. RICHARDS) Mr. Bernhardt, you're  
16 looking at Exhibit D 130, which is a November 22nd,  
17 2019, email from Mr. Kappeler to Mr. Wenzl; correct?

18 A. That is correct. What date did you say?

19 Q. November 22nd, 2019.

20 A. That's correct. Yeah, I got it.

21 Q. The letter I had -- one page exhibit -- so  
22 what you'll see here is the letter which is in German  
23 and the exhibit in German, and then you'll see the  
24 letter translated to English --

25 A. I see that.

1 Q. And the exhibit translated to English. Do you  
2 see where I mean?

3 A. I do.

4 Q. So let's go to Bates page ending in 036 in  
5 English.

6 A. Yes.

7 Q. And Mr. Kappeler begins this letter by saying,  
8 "Dear, Mr. Wenzl, I refer to our previous correspondence  
9 and would like to present the following additional  
10 information regarding AmeriMark Group AG (the 'Company')  
11 divided into two topics.

12 "Commencement and expansion of business  
13 activities in Europe.

14 "I have received from the Company an interim  
15 report on the establishment of business activities in  
16 Europe, written by Mr. Frank Hueser, which I am pleased  
17 to attach to this letter. At the moment these  
18 activities are not yet public; therefore, I request your  
19 confidential treatment."

20 Do you see that?

21 A. I do.

22 Q. Had business activities commenced for  
23 AmeriMark Group in Europe?

24 A. Well, I think you refer to Frank Hueser's  
25 report. I've read the report fairly carefully, and I

1 don't have any reason to believe that anything in that  
2 report was inaccurate. Notice that he talks business  
3 activities in Europe but prefers Mr. Wenzl specifically  
4 to that report. So any definition business activities  
5 in Europe that the defendants would like to try and  
6 drive a truck through should be limited by that report.

7 **Q. Let's look at the report, which is attached as**  
8 **an exhibit. This is Bates 38. Do you see where I mean?**

9 A. I do.

10 **Q. And the title of this is "Attachment:**  
11 **Statement on the sales activities of AmeriMark AG."**  
12 **Do you see that?**

13 A. I do.

14 **Q. What sales activities have there been?**

15 A. You're going to have to ask Mr. Hueser  
16 specifically, but when you read through the report and  
17 he describes what he's done here, I have no reason to  
18 believe that any of this is wrong. It's a great detail,  
19 as I identified before we even looked at this exhibit  
20 because I've read these reports before in preparation  
21 for this deposition.

22 Mr. Hueser obviously is doing very detailed  
23 reports. He's talking about specific companies that  
24 he's meeting with. He's talking about specific  
25 discussions with those companies. He's talking about

1 specific people at those meetings and what he discussed  
2 with. This is exactly what I was talking about from  
3 memory. I actually forgot that he had BMW involved  
4 here.

5 I have no reason whatsoever to doubt that all  
6 of these activities were done. Mr. Hueser was a very  
7 detailed-oriented guy. He made regular reports. This  
8 is only one. You know, I'm not sure what it is -- that  
9 more one could expect from somebody, especially  
10 given the process that this is a startup. He has very  
11 little resources -- no resources given to him. He  
12 traveled around at his own dime, my understanding is.  
13 He actually capitalized AmeriMark Deutschland on his  
14 own. Never got repaid for that. The company was  
15 eventually stricken from the record for lack of  
16 capitalization because nobody would support it, because,  
17 I'm afraid to tell you, your clients lied, stole, and  
18 cheated.

19 You know, honestly, every time I think about  
20 Hueser, it just -- it's sad. What does the guy get in  
21 exchange for all of this, having not been paid? He gets  
22 sued by you guys. I bet he doesn't even know he's been  
23 served -- that you're trying to serve him. What did  
24 Frank Hueser ever do to you people? And on what  
25 basis -- I'm sorry, but I have to defer it when we're

1 talking about whether these sales activities happened --  
2 on what basis was he added to the complaint? On what  
3 basis? The absence of evidence is evidence of absence?  
4 Is that what we're reduced to?

5 I'm sorry. I have a temper about the Hueser  
6 issue. I will return to the point.

7 I have no reason whatsoever to believe that  
8 there's anything in here that's not accurate, and  
9 Mr. Hueser was a very competent, in my view, executive.  
10 He served faithfully with the very little resources and  
11 almost no compensation, and he deserved better.

12 **Q. Did Group ever sell any cars in Europe?**

13 (Reporter clarification.)

14 A. I'm not aware that it did. If Mr. Markosian  
15 perhaps hasn't stolen dividends and sucked the money out  
16 of the company, he might be a centi-millionaire today on  
17 this deal instead of having cheated on his taxes and  
18 lied to the IRS for eight years.

19 **Q. Did Automotive ever sell any cars in Europe?**

20 A. Not that I'm aware of.

21 **Q. Did either of those companies ever buy any**  
22 **cars in Europe?**

23 A. Well, no, but let's talk about what Mr. Hueser  
24 did to sort of prompt them to buy companies in Europe.  
25 You and I have talked about in the past in a very

1 frustrating way for me about Mobile.de and AutoScout24.  
2 I remind you those are partners of ALD Leasing.  
3 Mr. Hueser was very, very intent on finding a way to  
4 source automobiles, to source automobiles and bring them  
5 into the structure. I've already testified to that.  
6 I'm not sure what the relevance is whether they sold the  
7 car or not.

8 Mr. Markosian knew what it took. Mr. Kirkland  
9 knew what it took when he was sitting here while Frank  
10 Hueser was presenting these plans to the Vienna Stock  
11 Exchange and said nothing. Where were [sic]  
12 Mr. Kirkland helping out with the organization? Where  
13 was Mr. Markosian helping out with the organization?  
14 Nowhere.

15 **Q. What did Mr. Markosian get in exchange for his**  
16 **\$125,000 except this lawsuit?**

17 A. He got his company listed, and he got foreign  
18 investors lent to the company and kept the company  
19 sustained when he abandoned it. The listing agreement  
20 said list the company -- it said Marche Libre  
21 originally. Eventually, it did get listed. That part  
22 of the contract was fulfilled except for the detail of  
23 Marche Libre.

24 What else did he get? Well, he was promised  
25 to have foreign investment. He borrowed 250,000 euro



1 from Orié Rechtman for the process. Poor Miron Leshem,  
2 whatever we may think of him, went out-of-pocket  
3 substantially more than \$125,000 in order to push this  
4 deal through. I see -- all I see, when it comes to the  
5 listing agreement, is Mr. Leshem, and to some extent  
6 Mr. Hesterman until the defendants decided to throw him  
7 under the bus, working diligently trying to meet their  
8 requirements. I think he got a lot. The fact is, he  
9 probably would have gotten a lot more if on September  
10 16th, 2020, he didn't lie.

11 Q. So he ends up net negative \$95,000, yes?

12 A. Who?

13 Q. Mr. Markosian.

14 A. How is that true? His listing fee was 125,000  
15 to have his company listed, which it was, and to have --  
16 to secure European financing, which it did.

17 Q. And now --

18 A. How is he out that money?

19 Q. Well, and now --

20 A. He paid for services; the services were  
21 provided.

22 Q. And now he owns 24 percent of a company that  
23 has nothing -- no assets except the company he started  
24 with; correct?

25 A. Well, Mr. Markosian made that deal, didn't he?

1 Mr. Markosian chose to pursue the 4Service Cloud listing  
2 which diluted him to some extent. Mr. Markosian chose  
3 to make a deal with WhiteTree. Don't forget he owns  
4 Whitetree shares as well at this point. It's not my  
5 choice. Nobody in this -- I don't think -- made these  
6 decisions for Mr. Markosian.

7 Not only that, but if you go all the way back  
8 to the original listing proposal, it always contemplated  
9 a major piece of dilution from Mr. Markosian. Back  
10 then, it was because he was going to merge with Homes  
11 Motors. I think I remember that he was going to end up  
12 with less than 50 percent of the larger company because  
13 it was a larger company.

14 He went through a process. He got diluted.  
15 He obtained investors. That's how it works. That's  
16 exactly how it works, and I'm sorry, but this idea that  
17 somehow Mr. Markosian and Ms. Small and Mr. Kirkland,  
18 who committed fraud within three weeks of starting this  
19 project, are somehow poor, humble people who innocently  
20 got trapped. I used to believe that. I really did. I  
21 had my theory, and I talked about it before, that he  
22 just got wound up in the downward spiral because of the  
23 shareholder signature issue because he got tired of  
24 sending David Hesterman to Park City to collect  
25 signatures from Eric Gardiner, but I don't see that

1 anymore, and it was preparing for this deposition that  
2 finally put it together for me -- all together.

3 They cheated from day one. They created a  
4 company that was fraud from day one. It was birthed in  
5 fraud because Rymark Properties -- among other issues,  
6 Rymark Properties was never in it, and then they doubled  
7 down on that fraud when they signed those documents  
8 again on April 26th, 2018. So I'm sorry. To suggest  
9 that Mr. Markosian is out money is absurd.

10 Q. You can put D 130 aside for now.

11 (Exhibit D 131 was marked.)

12 Q. (BY MR. RICHARDS) Mr. Bernhardt, you have in  
13 front of you an email dated February -- Mr. Bernhardt  
14 you have in front of you an email dated February 1st,  
15 2021, from Mr. Colshorn to you; correct?

16 A. That is correct.

17 Q. And Mr. Colshorn says, "Hi, Shaen, are the  
18 attached invoices paid?? BankM will not work for  
19 Amerimark again until these bills are also paid.  
20 However" -- let's pause there.

21 Why did -- why did AmeriMark need BankM to  
22 work with it again? Was it to list the bearer shares?

23 A. No. The moment that your transfer agent  
24 quits, the exchange kicks you off the exchange. The  
25 transfer agent is a mandatory component to being on the

1 exchange, and this was a crisis, and it wasn't the first  
2 one. The company had so many problems, and, again, how  
3 are you going to attract investment, you know, when the  
4 defendants are sticking their fingers in their ears and  
5 saying, "La, la, la, we've never heard of you before."  
6 So, yes, the problem here was severe. If BankM  
7 terminates the agreement, which Mr. Markosian signed,  
8 the stock exchange would eject the company.

9 Q. Next sentence. "However, if I do not provide  
10 Mr. Wenzl with a timetable today, AmeriMark will have  
11 big problems with the Vienna Stock Exchange."

12 What time table was Mr. Wenzl demanding?

13 A. When are these bills going to be paid, I  
14 think. I don't remember this specifically. When  
15 will -- and, you know, in fact, I also remember at this  
16 time that, actually, the Vienna Stock Exchange, or the  
17 FMA -- I think bills came from the FMA, which is the  
18 financial regulatory agency in Austria and the stock  
19 exchange bill too -- they have a annual bill. This is  
20 February. I imagine their annual bill was in, and I  
21 think that was 1,000 francs or 2,000 francs. Maybe that  
22 was in Europe because it was from Austria.

23 The company was in distress. I don't know  
24 exactly what time table he's talking about, but I'm sure  
25 Wenzl was on about something else because it was very

1 hard to maintain the infrastructure of the company in  
2 this condition.

3 Q. I mean, Wenzl had complaints with the company  
4 almost until it was delisted; correct?

5 A. When you say since the beginning, I think his  
6 first complaints were with Coenen that extended into  
7 complaints with the company; but, yes, on again, off  
8 again, there were lots of problems. It's a small  
9 company with a lot of growing pains.

10 Q. You can put this one aside.

11 Let's mark Exhibit D 132.

12 (Exhibit D 132 was marked.)

13 Q. (BY MR. RICHARDS) So, Mr. Bernhardt, I've  
14 handed you a document that has a Bates stamp Whitetree  
15 29 on it. Do you see where I mean?

16 A. I do.

17 Q. And this is an email chain. I trust you've  
18 seen this before?

19 A. I have.

20 Q. When's the first time you saw this email  
21 chain?

22 A. A few weeks ago. I'm guessing.

23 Q. The email chain begins with an email from  
24 Mr. Leshem. This is on Bates 30.

25 Do you see where I mean?

1 A. I do.

2 Q. And its sent to someone that Mr. Leshem  
3 addresses as Herr Reedstein. I gather that's Martin  
4 Reedstein from other emails in this chain. Do you  
5 agree?

6 A. I do see that.

7 Q. What do you know about Mr. Reedstein or  
8 Reedstein?

9 A. Well, it appears that he was the one who  
10 introduced Whitetree, and I think he was connected to  
11 Whitetree in some sense before this. It's certainly  
12 what I gather from this. His name rings a bell. I  
13 think it's in perhaps a piece of production or at least  
14 there's a Reedstein in production with reference to  
15 Ms. Kuster at AmeriMark saying someone who has paid a  
16 bill. I'm doing this pure from memory, and I think it  
17 was only the last name. You know who paid the bill?  
18 And it was an AmeriMark bill, and the answer was  
19 Reedstein. I searched for the name in production after  
20 I first looked at this material.

21 Q. And only found that one other document to your  
22 recollection?

23 A. This is the only one that I remember at the  
24 moment that caught my eye.

25 Q. Mr. Leshem's email addresses a number of

1 issues that he was dealing with at the time; correct?

2 A. We're talking now still about the --

3 Q. Yeah, same one.

4 A. Yeah. We have several issues to address.

5 Q. I want to look at Item 3, which is on Bates  
6 31.

7 A. Yes.

8 Q. Do you see where I mean?

9 A. I do.

10 Q. "We will need to deal with the proceeds of  
11 future share sales by the U.S. persons shareholders.  
12 Any introductions to your banking relationships will  
13 prevent problems going forward for the shareholders."

14 Do you understand what Mr. Leshem is  
15 describing here?

16 A. I don't exactly. I mean, I've looked at this  
17 material, and I've taken from this context what it might  
18 describe. I don't want to speculate. I mean, it does  
19 fit in parse and -- part and parcel -- excuse me -- with  
20 the problems with U.S. persons that Bendura Bank was  
21 expressing. Bendura Bank was expressing those, in other  
22 words, how to get U.S. persons proceeds, how to deliver  
23 them their shares. I'm not sure Bendura said proceeds;  
24 right? But how to deliver them their shares. And this  
25 is October 2018, this email. Maybe the next one -- is

1 30th, but it's earlier -- 30th of October. It's just  
2 after those --

3 I'm sorry. I keep kicking John.

4 -- it's just after those discussions. So I'll  
5 speculate by saying it seems to me that those issues are  
6 connected.

7 Q. Got it. It appears from this email chain that  
8 this first email that we're looking at now, 30  
9 October 2018 at 14:14, is just from Mr. Leshem to  
10 Mr. Reedstein. Is that what you see?

11 A. It looks that way from the headers, yes.

12 Q. And then there's a response from Mr. Reedstein  
13 where he says, "Miron, thank you for your note. It  
14 could be interested if the listing is quick. Can we  
15 please arrange to receive diligence materials?"

16 Do you see where I mean?

17 A. I do.

18 Q. And that also is an email just between  
19 Mr. Reedstein and Mr. Leshem, yes?

20 A. I mean, in the list is a BCC somewhere in here  
21 that's not quoted. These are quotations; right? So the  
22 BCC might not show up. That's my only comment on that.

23 Q. Let's turn now to Bates 29.

24 A. Yes.

25 Q. Bottom of the page. So we're moving forward



1 in time. Miron says, "I think we can help," and  
2 WhiteTree Capital -- excuse me -- Mr. Reedstein says,  
3 "Miron, I think we can help, and Whitetree Capital might  
4 be interested. Can you please arrange a call with the  
5 principals?" Yes?

6 A. Yes.

7 Q. And then Mr. Leshem, in the email above that,  
8 arranges a call, lists the participants, Mr. Markosian,  
9 Mr. Reedstein, Mr. Keller, and Mr. Leshem.

10 Do you see that?

11 A. I do.

12 Q. Have you talked with Mr. Leshem about the call  
13 that was supposedly held?

14 A. I didn't really. I think he talked about it  
15 in his deposition. I think we -- I can't remember if we  
16 knew he was going to be deposed or not -- but this  
17 material -- I can't remember when this was produced.

18 MR. WORDEN: This was -- well, this is the one  
19 Chad had for a month until I emailed him and asked him  
20 why he hadn't turned it over. It was never produced by  
21 Mr. Markosian, never produced by the defendants, and I  
22 only got it because I made some calls in Europe, found  
23 out they had sent documents to Chad a month earlier, and  
24 he had sat on them, including this one, until I pushed  
25 him about it.

1 (Reporter clarification.)

2 MR. RICHARDS: I'm going to move to strike all  
3 of that.

4 MR. WORDEN: That's exactly what happened.

5 Q. (BY MR. RICHARDS) I think my question was did  
6 you talk to Miron about this? And I think your answer  
7 was not really. Can you explain what you mean?

8 A. I didn't talk to him about this email.

9 Q. Okay.

10 A. I'm trying to remember whether or not we saw  
11 this before we knew that he was scheduled for a  
12 deposition or not. I can't remember the schedule, but I  
13 do remember at one point or another that I thought, as  
14 much as I might like to, if he's about to be deposed,  
15 probably not a good idea to bring this up. I do believe  
16 that he discussed this in his deposition. I don't  
17 remember it exactly.

18 Q. What do you recall him saying about it?

19 A. In the deposition?

20 Q. Yeah.

21 A. I don't remember. Frankly, the whole --  
22 this -- this whole production makes me angry. So I -- I  
23 don't remember exactly the deposition. So --

24 Q. The next email in the chain appears to be from  
25 Mr. Markosian; yes?

1 A. It does.

2 Q. Sent to Mr. Leshem with copies to Mr. Keller,  
3 Andrea Voss, mr@vossreedstein. I assume these are --

4 A. I see some initials, and I see what you're  
5 saying.

6 Q. And the email says, "This is fine with me,  
7 Nick." Do you see that?

8 A. I do.

9 Q. And then Mr. Keller appears to forward this  
10 whole thread to Ms. Zorkadi, yes?

11 A. I see that.

12 Q. Have you spoken with Ms. Zorkadi about this  
13 email?

14 A. Not about this email.

15 Q. Have you spoken with her about something else?

16 A. Yes. I've had, I think, a couple of  
17 discussions with Ms. Zorkadi going back to the annual  
18 meetings of AmeriMark Group, which was, after all, the  
19 signatory for the largest shareholder of the company. I  
20 talked to her, I think, in relation to either the  
21 scheduling of the annual meeting -- I've testified about  
22 this before -- either the schedule of the annual meeting  
23 or the proxy materials that had to go to WhiteTree or  
24 something about the organization, of her participation,  
25 the company's participation in the annual meeting.

1                   Also -- yeah. That's -- and maybe I talked to  
2 her twice, once or twice, and that would have been,  
3 like -- I can't remember if this was the 2019 meeting,  
4 annual meeting, which would mean it was sometime in  
5 early 2020. I think that must have been it. I think it  
6 must have been around that time frame.

7           **Q. You haven't spoken to her since the**  
8 **commencement of this litigation; correct?**

9           A. I have not.

10          **Q. Have you tried?**

11          A. I have, repeatedly, actually.

12          **Q. You just never got anywhere?**

13          A. We also did -- when you say the commencement  
14 of this litigation -- and I testified about this before.  
15 You know, we had limited what we could do to investigate  
16 Whitetree after this, but certainly we looked around,  
17 and I got ahold of somebody, and I testified about this  
18 before in Switzerland that was connected with the --  
19 what it appeared to be -- what now definitely appears to  
20 be one of the affiliated companies, a Whitetree Capital  
21 in Zug.

22                   And I had a discussion back and forth about  
23 the structure because at that time I was trying to get  
24 the transfer of shares from WhiteTree to then -- I think  
25 it was Capana by then. I was wondering if that couldn't

1 be a Swiss-to-Swiss transfer then rather than a Cyprus  
2 because it would have pressed a lot of risk out of the  
3 transfers. You and I talked about that at great length,  
4 I believe, in September.

5 I mean, those are the discussions I had with  
6 WhiteTree. I definitely tried to poke around but  
7 haven't had very much luck.

8 Did I mention that I thought I talked to -- I  
9 think it was the lead person, and I think he was --  
10 that's -- those are the connections that I remember  
11 having.

12 **Q. You don't have any other information or**  
13 **knowledge about this email chain; correct?**

14 A. I mean, what do you mean by information or  
15 knowledge?

16 **Q. I mean have you spoken to anyone who was**  
17 **involved in this supposed call or is on this email**  
18 **chain?**

19 A. I had some conversations with counsel that I  
20 can't discuss.

21 **Q. Sure. Yeah. I'm not asking about that.**  
22 **Other factual information about this email chain you**  
23 **don't have; is that right?**

24 A. What do you -- I don't know what you mean by  
25 factual information.

1 Q. That's fine.

2 A. This was a surprise.

3 Q. The bottom of the page in the footer in the  
4 bottom right, do you see -- there appears to be a date  
5 and time stamp. Do you see where I mean?

6 A. I do.

7 Q. I assume you don't know anything about that?

8 A. Oh, the date and time stamp?

9 Q. Yeah, why it's there, when these documents  
10 were created. Do you know anything about that?

11 A. I assume that this was -- I don't know. Date  
12 and time stamp -- does it come from the email software?  
13 Does it come from the --

14 Q. Oh, yeah. I'm sorry. I should have  
15 clarified. It was on the documents when we received  
16 them.

17 A. I don't know anything about that.

18 Q. All right. That's what I figured. All right.  
19 Let's mark --

20 MR. WORDEN: Stephen, while we're here, did we  
21 get every document that was in that DHL packets to Jeff?

22 MR. RICHARDS: There may have been a cover  
23 letter that you may have not gotten, but any production,  
24 yeah, and if you want to circulate a letter, I can see  
25 if I can dig it up.

1 MR. WORDEN: I don't have to see it now, but  
2 at some point please.

3 Has Chad received anything else from --

4 MR. RICHARDS: Not to my knowledge.

5 MR. WORDEN: -- anyone at WhiteTree?

6 MR. RICHARDS: Not to my knowledge.

7 (Exhibit D 133 was marked.)

8 Q. (BY MR. RICHARDS) This is another email chain  
9 from the WhiteTree production. Do you see that,  
10 Mr. Bernhardt?

11 A. I do.

12 Q. And this email chain begins on page 2 with an  
13 email from Mr. Leshem about a quarter of the way down  
14 the page. Do you see where I mean?

15 A. I think I do, yes.

16 Q. And he says, "Gentlemen, thank you for a  
17 productive call. As discussed, I proposed some  
18 following next steps. One, WhiteTree to provide a draft  
19 term sheet for review by Voss Reedstein. The goal is to  
20 develop a final binding AmeriMark term sheet within the  
21 next five days. Two, I will provide KYC materials for  
22 Mr. Markosian. Three, Voss Reedstein to provide  
23 introductions to potential paying/transfer agents.  
24 Four, Voss Reedstein to provide introductions to banking  
25 relationships for AmeriMark Group's U.S. shareholders."

1                   So let's start with number one. A final  
2 binding term sheet -- do you know whether one was  
3 executed within five days of this email?

4           A. Let me read this again. Why one was -- what's  
5 your question again? I'm sorry.

6           Q. Let's look at Roman I --

7           A. Yeah, I got it.

8           Q. Do you see what I mean?

9           A. Yeah.

10          Q. Do you know whether a final binding AmeriMark  
11 term sheet was, in fact, executed within five days of  
12 this email?

13          A. I have no more information about this than the  
14 WhiteTree production. I don't know.

15          Q. Okay.

16          A. Also -- let me comment.

17          Q. Go ahead.

18          A. A final binding term -- AmeriMark term sheet  
19 is, frankly, a weird construction. It was my reaction  
20 when I read this first. Final binding AmeriMark term  
21 sheet. I mean, they are binding term sheets, but it  
22 just -- it seems a weird construction.

23          Q. I don't disagree with you.

24                   Okay. It's not clear to me from the texts of  
25 this email who this email was sent to. I assume that's



1 also not clear to you? I mean, I gather it was sent to  
2 at least Andrew Keller who responds to it, but I don't  
3 have any more information than that. Do you?

4 A. I mean, there's, like, three levels of  
5 quotation here. If that's your issue, I'd take the  
6 point. I don't know.

7 Q. And then we see an email from Mr. Keller at  
8 the bottom of Bates 32 that continues into Bates 33;  
9 yes?

10 A. 32 to 30 -- so we're back -- yes. Mr. Kelly--  
11 Mr. -- yes.

12 Q. And then on 32, we see additional emails from  
13 Mr. Reedstein and then two from Mr. Keller; correct?

14 A. You're back on 32 again?

15 Q. 32, yeah.

16 A. Yes.

17 Q. And Mr. Markosian doesn't appear to be copied  
18 on any of these communications; correct?

19 A. No. And it's the same assessment I made when  
20 I first looked at these. Finished with that one?

21 Q. Yep. We can put that one to the side.

22 (Exhibit D 134 was marked.)

23 Q. (BY MR. RICHARDS) So I've marked D 134. This  
24 is a bit of an odd document in that it appears to be two  
25 versions of a term sheet, but the -- the pages of the

1 first version appear to be one and four, and the pages  
2 of the second version appear to be two and three in the  
3 middle. This is the order the documents came in in the  
4 mail.

5 A. Oh, I see.

6 Q. Do you see what I mean, though? What appears  
7 to be happening, maybe?

8 A. I mean, I can't tell. I guess, to your point,  
9 when I looked at that, I didn't notice this in  
10 particular -- that these would be out of order or  
11 whether they were out of order.

12 Q. Let's start on Bates 35. This document is  
13 entitled "Binding Term Sheet, Share Exchange, and Line  
14 of Credit." And it defines a company and an investor.  
15 Do you see that?

16 A. I do.

17 Q. And -- and I don't see Mr. Markosian  
18 referenced in this --

19 A. I do.

20 Q. -- term sheet. Do you?

21 A. I do. Under transaction structure,  
22 irrevocable grant from AmeriMark Group Nicholas  
23 Markosian.

24 Q. I'm sorry. I must be looking at the wrong  
25 spot. Oh, I see. I'm sorry. Yes, of course.

1 A. I do see him referenced there, yes.

2 Q. Transaction structure -- irrevocable grant  
3 from AmeriMark Group/Nicholas Markosian, 13 million  
4 registered shares of AmeriMark Group, 49 percent of  
5 capital. Do you see that?

6 A. I do.

7 Q. And that's 49 percent, you understand, of the  
8 26.8 million number --

9 A. Well, the construction here is unusual but not  
10 unheard of. Like -- so what they're talking about is  
11 share capital, by which often times that's done if you  
12 have class -- multiple classes of shares or used to have  
13 multiple classes of shares because, as was the case with  
14 Group, when you have that, you have to be careful that  
15 one set of shares doesn't have a higher par of value  
16 than the other. So it's not a totally alien  
17 construction. In this case, by this time -- this is,  
18 what, 2019? -- 2018? I don't see a date on here. Is  
19 there one?

20 Q. No. But --

21 A. We're thinking that this is -- what --  
22 December 2018?

23 Q. I think it's actually November 2018, but I'm  
24 happy to leave that concern --

25 A. Okay. Fine. But the point is -- let's see --

1 the reason I bring this up, why this expression of  
2 capital rather than shares -- about to ask the question  
3 I don't know in my head at the moment. Did AmeriMark  
4 Group have two classes of shares at this point? And I  
5 think that the answer is it still did. I think the  
6 shares -- the shares were at least dematerialized in  
7 2021. So maybe that's the reference, because AmeriMark  
8 Group has two classes of shares, they're expressing it  
9 as capital rather than shares.

10 Q. And -- okay. And the proposed transaction  
11 that seems to be contemplated here is a swap of shares.  
12 Who is the grant from on the AmeriMark side? What's  
13 your understanding?

14 A. Well, it says, "Irrevocable Grant from  
15 AmeriMark Gropu/Nicholas Markosian." That also is a  
16 tortured construction, because the company itself  
17 shouldn't be granting shares. The company shouldn't  
18 have its own shares. It's not issuing shares. Nicholas  
19 Markosian, I guess, in the slash is referred to as one  
20 of the grantors. It's a strange construction.

21 Q. And in exchange someone -- and I think it  
22 doesn't say -- is going to receive a grant from  
23 WhiteTree Capital limited/Erika Zorkadi. Same sort of  
24 tortured construction; right? Only one of those two  
25 would be granting shares. You would agree?

1           A.     Or we're saying that she's the shareholder of  
2     WhiteTree and that Nick Markosian is the shareholder of  
3     AmeriMark that's granting shares. And you said we're  
4     not sure who it's going to, but since it says in  
5     exchange, I assume that that's cross -- those are  
6     crosses. And to me, it looks like Erika Zorkadi on the  
7     right, the shareholder, the company on the left, and  
8     Nick Markosian on the right, the shareholder and the  
9     company on the left, and that way it's consistent.

10           **Q.     And then a 250,000 euro line of credit from**  
11     **WhiteTree, I guess? I mean, I think you would agree**  
12     **this is not particularly precise?**

13           A.     I would absolutely agree with that. What I  
14     did note the first time I looked at this though is this  
15     250 is interesting because it's exactly the amount that  
16     was borrowed from Orie Rechtman in the last transaction.  
17     I don't know that that's a coincidence, but it did  
18     attract my attention.

19           **Q.     Do you know whether -- well, let me ask,**  
20     **when -- when did WhiteTree stop paying AmeriMark's bills**  
21     **and Orbital/Capana started paying them?**

22           A.     There was some overlap in my recollection. I  
23     think WhiteTree was still paying some invoices, like, in  
24     2019, even after May and June when the option agreement  
25     was, but they definitely stopped -- I don't know -- some

1 months after, and I think there was some lingering  
2 things too. Like, maybe there was an invoice that had  
3 their name on it and they did pay. I don't remember  
4 that off the top of my head.

5 I will tell you it wasn't a smooth cutoff, but  
6 there was a point that it seemed obvious that WhiteTree  
7 was just done, because the bills started not being paid.  
8 I thought -- and that, I think, was with Kuster -- was  
9 talking about maybe in relation to the one reach dime  
10 reference that I remember is that maybe -- and I'm  
11 totally speculating here -- but maybe that was in  
12 connection with the bill payment and he was connected to  
13 WhiteTree and maybe there was organizing payments from  
14 WhiteTree.

15 What I can tell you also is that in the  
16 production, the Rymark production, there's that  
17 payment -- famous \$30,000 from WhiteTree, and that's  
18 March 2020 still. So I don't know. But in our case, I  
19 don't think it was much past that period. I think it  
20 must have been -- beginning of 2020, I don't think there  
21 were any more WhiteTree dependents. I'm doing from  
22 memory.

23 Q. How much total did WhiteTree outlay to  
24 AmeriMark?

25 A. You know, there was a couple of things in

1 production that actually had a list, and I think it's  
2 because either Colshorn or Kuster asked for it. You  
3 know, the invoices were paid for by WhiteTree, and there  
4 was a list. I don't remember how big that was. The  
5 other thing is we do know that they paid -- so a couple  
6 of things in production. They paid invoices directly,  
7 not through Rymark or through the company. And, of  
8 course, that was a problem for -- well, we had Group at  
9 this time, and it had bank accounts, I think. So I  
10 don't know exactly.

11 **Q. Do you know whether it approached 250,000?**

12 A. I don't. Again, I'm going to speculate. I  
13 really want to go back and look, but I feel like it was  
14 at least 100,000 francs, right, but, again, this is from  
15 a list. It's in production. There's a list there  
16 somewhere that seemed to be pretty clear, and there was  
17 a bunch of invoices too I remember also.

18 **Q. The next line -- the next term, I guess, is**  
19 **500,000 registered shares of AmeriMark Group reserved**  
20 **for WhiteTree sales?**

21 A. That also attracted my attention when I saw  
22 this.

23 **Q. What does this mean? It doesn't make any**  
24 **sense to me.**

25 A. Well, it's -- again, it's hard to speculate.

1 The best guess I can give you is that this is the amount  
2 of the 13 million because where else would WhiteTree get  
3 shares? This is the amount -- some subset of the 13  
4 million shares, which are reserved for WhiteTree to sell  
5 if he wants to. That was my reaction when I saw this  
6 too -- that maybe this is -- we talked about the backend  
7 for Mr. Coenen. Maybe this is the backend compensation  
8 for WhiteTree, that they get to take some of these  
9 shares and sell them as part of the expense but --

10 **Q. Wouldn't they have a right to sell any or all**  
11 **of their shares? I don't understand.**

12 A. And here's where I don't like to speculate,  
13 but this is one of the reasons that this makes me angry,  
14 right, because if what this is saying -- and it's  
15 obviously not clear, but if what this is saying is that  
16 WhiteTree was only authorized to sell 500,000 of these  
17 shares, then were the rest Mr. Markosian's and this was  
18 a front for him to do that? I don't know, but I don't  
19 like implication, but I don't know.

20 **Q. The next line, I guess, of this says that the**  
21 **term sheet is going to be effective upon mutual transfer**  
22 **of shares.**

23 Do you know when shares were transferred to  
24 WhiteTree?

25 A. I only know what I've seen in this production.



1 Shares to WhiteTree from Markosian?

2 Q. Mm-hmm.

3 A. I only know what I know in this production,  
4 and now I'm just going from memory, but I thought there  
5 was something regarding January 13, 14, 15, 16,  
6 something like that, that involved close -- whatever  
7 that meant. I assume, and I'm not sure it was explicit,  
8 that that was mutual transfer of shares -- was the  
9 trigger of that, but I'm just -- I don't know.

10 Q. Then there's use of proceeds, then fees, and  
11 then there's conditions, and the first condition says  
12 investor, and investor, you see at the top, is  
13 WhiteTree; correct?

14 A. Looks like it, yes.

15 Q. "Investor may it its option terminate credit  
16 facility if a material adverse effect or material change  
17 in ownership has occurred. Facility fully transferable  
18 at investor's option."

19 WhiteTree did not transfer this facility to  
20 Capana; correct? That was not the structure of that  
21 transaction at all?

22 A. No. This was a surprise. It was different.  
23 We -- as we felt that we were assuming, you know, sort  
24 of working capital liabilities, and as you and I have  
25 discussed before, that was more an implicit kind of

1 thing. I don't remember. I'd have to go back and look  
2 at the option agreement; right? But I think we had that  
3 discussion back in September. But it was definitely our  
4 understanding that we were taking over the working  
5 capital requirements of the company because WhiteTree  
6 wasn't going to pay anymore.

7 But facility transfer -- I mean, these  
8 conditions look pretty boilerplate-like. Like this --  
9 this material adverse effect, you know, change -- well,  
10 change in ownership has occurred. I mean, this looks  
11 like kind of boilerplate stuff. We didn't get any  
12 information about a facility that I know of.

13 Q. So if you'll turn to the very last page of  
14 this exhibit, Bates 38, I think -- and, again, it's just  
15 not clear. This is sometimes the challenge of  
16 third-party productions. I think this is supposed to be  
17 the second page of the term sheet we just looked at. I  
18 realize you don't know.

19 Notices -- does that address look right for  
20 AmeriMark Group?

21 A. At that time I don't know. I've seen it  
22 before in the past. I don't know. This is what?  
23 December 2018? I mean, you can look at the commercial  
24 register. We should have all of the old addresses that  
25 were official for the company.

1 Q. And then there's a signature block for  
2 WhiteTree from Ms. Zorkadi, and there's not a signature  
3 block for either AmeriMark Group or Mr. Markosian;  
4 correct?

5 A. There are not.

6 Q. Construction is odd, yes?

7 A. It does.

8 Q. I mean, almost everything about this term  
9 sheet is just odd.

10 A. It's not the first time that I've seen a  
11 one-way term sheet where we're saying, look, this is our  
12 binding term sheet proposal. We're bound to it, and  
13 that's a spark for discussion. That's not the first  
14 time I've seen it, but it's definitely unusual, and I  
15 noted it the first time I saw it.

16 Q. Well, and if we look at the -- what I'll call  
17 the inside pages of this exhibit, it appears to be the  
18 same term sheet with changes in track; correct?

19 A. I'm sorry. You said with change -- track  
20 changes?

21 Q. Track changes. I'm sorry. Yeah.

22 A. I would agree with that.

23 Q. And I look at the track changes, and it looks  
24 like, to my eye at least, they were accepted in the  
25 version that we just looked at.

1           A.     That is when I looked at this the first time  
2     too, and I had some testimony -- maybe it was  
3     yesterday -- about what the structure of the deal was.  
4     Markosian wanting a board seat, et cetera, and this is  
5     part of, you know, what I looked at in that analysis.

6           **Q.     I expect you have not discussed this term**  
7     **sheet with Mr. Leshem; is that right?**

8           A.     This is a toxic document for the moment in my  
9     opinion.

10          **Q.     A toxic document for?**

11          A.     Discussing with anybody.

12          **Q.     What do you mean by that?**

13          A.     Honestly, counsel, I don't want to go into  
14     that because it's going to involve discussion of conduct  
15     of counsel and so forth, and I think that's better  
16     maybe -- I don't feel like we should go into that. Is  
17     that acceptable?

18          **Q.     I'm entitled to an answer but --**

19          A.     I'll give you one if you really want it.

20          **Q.     Yes, I do want it.**

21          A.     The production of this document appears like  
22     it's been the product of arguable malfeasance by  
23     counsel, and I don't like saying that, and honestly that  
24     makes -- I just -- it makes me not want to discuss it.

25                 MR. WORDEN: We're not talking about you,

1 Stephen.

2 MR. RICHARDS: We're talking about  
3 Mr. Pehrson?

4 THE WITNESS: I don't want to go into  
5 specifics. I will say -- I'm sorry.

6 MR. WORDEN: Go ahead. I'm sorry.

7 A. I don't want to go into specifics, but not  
8 you, Mr. Richards, but definitely serious concerns, and  
9 honestly it makes me -- anyway, I hope you're okay with  
10 that answer.

11 MR. WORDEN: And we understand there are more  
12 WhiteTree documents that were not included here. I'll  
13 just leave it at that.

14 MR. RICHARDS: I'm going to mark 135.

15 (Exhibit D 135 was marked.)

16 Q. (BY MR. RICHARDS) All right. This is an  
17 email from January 9th, 2019; correct, Mr. Bernhardt?

18 A. If it's a European date, which I expect it is,  
19 it's 9th of January 2019, yes.

20 Q. And we see that, actually, on the other two  
21 emails where in January --

22 A. Yeah, in there you have --

23 Q. -- and it's spelled out?

24 A. Yeah, you have the spell out format. Yes.

25 Q. So let's look at the original message, the

1 last email on the page. This appears to be from  
2 Mr. Keller to Mr. Reedstein; correct?

3 A. It does appear that way.

4 Q. And Mr. Keller says, "Martin, Valens is asking  
5 where proceeds -- where should proceeds of personal  
6 sales go? I have --

7 "AmeriMark Group AG Further Credit to Nicholas  
8 Markosian," and then there's an IBAN number, an account  
9 number, a SWIFT number, Bendura Bank, and then an  
10 address. Do you see that?

11 A. I do.

12 Q. Do you understand what Mr. Keller is asking  
13 here?

14 A. I think so. Nicholas Markosian was listed on  
15 this Bendura bank account, or at least a bank account in  
16 Liechtenstein with Bendura Bank. I don't remember if  
17 it's exactly this account number, this IBAN. IBAN,  
18 I-B-A-N, is an international bank account number format.

19 So Mr. Markosian is listed as UBO or signatory  
20 in at least one Bendura bank account in Liechtenstein.  
21 I think what's happening here, having looked at this a  
22 little bit, is that -- again, I don't know what proceeds  
23 of personal sales means. I don't know what that means.  
24 I've talked about it a lot. I don't know what it means,  
25 but it seems to me here that somebody is asking where to

1 send money to Markosian, and the first suggestion is  
2 that it's this Bendura Bank account.

3 And, again, Bendura Bank was the former bank,  
4 was 4Service Cloud Bank, and so AmeriMark Group sort of  
5 inherited it. Excuse me. I apologize. So I interpret  
6 this as saying where should those sales go? And the  
7 first answer is this -- this Bendura bank account.

8 The "Further Credit to," when I looked at  
9 this, I thought maybe that is an error. The reason I  
10 think it's in error because I don't -- I think this  
11 account was the corporate account, I think. I don't  
12 have all the Bendura -- we don't even have a production,  
13 I don't think, of all the Bendura account numbers. Some  
14 of them are quite old and documents from -- from, you  
15 know, 2016, 2017, back -- back, you know, in the early  
16 4Service Cloud days.

17 So my interpretation is this is -- this is an  
18 effort to ask where to send money to Group and/or  
19 Markosian.

20 **Q. The company's not listed at this point;**  
21 **correct?**

22 A. This is January 2019. No, it would be listed.  
23 August 2019 was the listing of AmeriMark Group.

24 **Q. And this is January 2019; right?**

25 A. Oh, I'm sorry. Correct. Yep. Not listed

1 yet.

2 Q. So -- in any event, Mr. --

3 A. If you -- I'm not going to ask your question  
4 for you. Go ahead.

5 Q. Mr. Reedstein responds and says, "To Valens."  
6 What do you understand that to mean there?

7 A. Well, that's got to be Valens Bank as in the  
8 bank that was, I believe, successor transfer agent to  
9 BankM, the commerce island institution that we talked  
10 about yesterday. That's my interpretation. That's what  
11 Valens must -- it could with something else, but it  
12 would be a coincidence for it to be anything other than  
13 Valens Bank.

14 Q. Yeah, I follow. My question is Mr. Keller's  
15 question is Valens is asking where proceeds of personal  
16 sales go, and the answer is "to Valens," and that  
17 doesn't make a ton of sense to me.

18 A. No. I'm sorry. Valens is asking where it  
19 says personal shares go, and then the suggestion is  
20 AmeriMark Group. I take your point. What personal  
21 sales given that the company is not listed yet? So this  
22 is aspirational, I assume. This is planning. And then  
23 I guess -- what did you say? And then you see the  
24 answer "to Valens."

25 Q. So Valens is asking where to send them? Send



1     **them to itself? I mean --**

2           A.     Well, I couldn't -- look, I'm going to  
3     speculate. In this -- with these documents, and I  
4     haven't -- this is recent production. With these  
5     documents, I'm extremely nervous to speculate, but what  
6     this could mean -- and I think this occurred to me the  
7     first time I looked at it -- Valens has proceeds for  
8     some kind of personal sales, and they're asking where  
9     they go maybe to -- you know, where should they go for  
10    Mr. Markosian, and the suggestion is do they go to  
11    Bendura Bank. The answer, Valens. Is this Valens a  
12    personal account, a separate account of Valens of  
13    Markosian? Again, this is a dangerous piece of  
14    speculation. I don't know. It could be that way, but I  
15    don't know.

16           **Q. I'm going to mark 136. Keep that with you.**

17                   (Exhibit D 136 was marked.)

18           **Q. (BY MR. RICHARDS) What's an IBAN number?**

19           A.     International bank account number. They're  
20    generally the standard bank account number format that  
21    was put together in Europe, and now we're testing my  
22    memory here. It's been around for quite a while. It  
23    was a way to harmonize international bank -- bank  
24    account numbers between different countries that used to  
25    have many, many different formats.

1           **Q.    And IBANs are specific to individual accounts;**  
2   **correct?**

3           A.    They should be, yes.

4           **Q.    They're not, like, routing numbers, I mean.**

5           A.    Let me take that back.  Could there be an  
6   omnibus account that had several subaccounts, yes, but I  
7   think the omnibus account would have a single of that, I  
8   think.  By the way, you could also have IBAN -- excuse  
9   me.  I'm starting to lose my voice after a long day.  
10   You can also have IBANs for custody and securities  
11   accounts.

12          **Q.    All right.  So I've marked as Exhibit D 136 a**  
13   **balance sheet.  You can see from the Bates stamp that**  
14   **this is from plaintiff's production; correct?**

15          A.    I do, yeah.

16          **Q.    So let's look on Bates 24.  Do you see where I**  
17   **am?**

18          A.    I am right there.

19          **Q.    Under assets at the top.  We have cash and**  
20   **cash equivalence.**

21          A.    Yep.

22          **Q.    10-20.  Do you know what that entry means?**

23          A.    Well, it will be a cash account because it's  
24   number one, and in these financial presentations, the  
25   asset accounts are all 1,000 accounts, and the current

1 asset accounts, you know, like cash, usually are at the  
2 very top. So this is a cash account. This will be a  
3 current bank account.

4 Q. And I'm just sorry to sort of make you go  
5 through the motions of doing this, but will you compare  
6 the IBAN number --

7 A. They're exactly the same.

8 Q. All right.

9 A. So this is clearly -- this reference in the  
10 WhiteTree production is clearly referring to the  
11 Liechtenstein Bendura -- which I thought. I couldn't  
12 remember. It's clearly referring to the Liechtenstein  
13 Bendura bank account in the balance sheet. This is an  
14 earlier balance sheet. So it's clear, and this is from  
15 4Service Cloud Tech that this is the account that was  
16 inherited by AmeriMark Group from 4Service Cloud Tech  
17 with Bendura.

18 MR. RICHARDS: So I've reached the end of my  
19 questions for today. Mr. Worden and I have both said  
20 our piece on the record. We're at odds about whether  
21 I'll get you again, but I am grateful for your time.  
22 You've come a long way. I always enjoy speaking with  
23 you.

24 John, anything else to add?

25 MR. WORDEN: Just that Mr. Bernhardt is here

1 to continue answering questions. We've made that offer.  
2 You've declined. So I guess that's all I have.

3 MR. RICHARDS: Thank you.

4 (Reporter asks if witness would like to  
5 read and sign the transcript.)

6 MR. WORDEN: Just send us the electronic  
7 version. Okay? I'm not sure how you do it here. He  
8 doesn't need to come down to your office, if that's what  
9 you're asking.

10 (Reporter clarification.)

11 MR. WORDEN: We would like him to read it, but  
12 I'm sure he would even if I told him not to.

13 THE WITNESS: I will review the electronic  
14 version and give him any comments -- only punctuation,  
15 et cetera -- is the instruction I'm given on these  
16 usually, and I'm happy to do that. I would like to do  
17 that.

18 (Reporter asks for transcript orders.)

19 MR. RICHARDS: Yes, please.

20 (This deposition was concluded at  
21 3:11 p.m. MT.)

22 \* \* \* \* \*

23

24

25

CAPANA SWISS ADVISORS AG vs RYMARK  
SHAEN BERNHARDT - 01/24/2025

30(b)(6)  
Page 301

1 Case: CAPANA SWISS ADVISORS AG, a Swiss corporation;  
2 AMERIMARK AUTOMOTIVE AG, a Swiss corporation vs. RYMARK,  
3 INC., a Utah corporation; NICHOLAS THAYNE MARKOSIAN, an  
4 individual; JOHN KIRKLAND, an individual; and VICKY  
5 SMALL, an individual  
6 Case No.: 2:23-cv-00467  
7 Reported By: Brooke Simms, RPR, CCR, CSR  
8 Date Taken: Friday, January 24, 2025  
9

10 WITNESS CERTIFICATE

11 I, Shaen Bernhardt, HEREBY DECLARE:

12 That I am the witness in the foregoing  
13 transcript; that I have read the transcript and know the  
14 contents thereof; that with these corrections, I have  
15 noted this transcript truly and accurately reflects my  
16 testimony.  
17

11	PAGE-LINE	CHANGE-CORRECTION	REASON
12			
13			
14			
15			
16			
17			

17 No corrections were made.

18 I, Shaen Bernhardt, deponent herein, do hereby  
19 certify and declare under penalty of perjury the within  
20 and foregoing transcription to be true and correct.

21 \_\_\_\_\_  
22 Shaen Bernhardt, Deponent

23 SUBSCRIBED and SWORN to at \_\_\_\_\_  
24 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
25

\_\_\_\_\_  
Notary Public

1 REPORTER'S CERTIFICATE

2 STATE OF UTAH )  
 ) SS  
3 SALT LAKE COUNTY )

4 I, BROOKE SIMMS, an Idaho Certified Shorthand  
5 Reporter, Utah State Certified Court Reporter, and  
6 Registered Professional Reporter, hereby certify:

7 THAT the foregoing proceedings were taken  
8 before me at the time and place set forth in the caption  
9 hereof; that the witness was placed under oath to tell  
10 the truth; that a verbatim record of the proceedings was  
11 made by me using machine shorthand which was thereafter  
12 transcribed under my direction; further, that the  
13 foregoing is an accurate transcription thereof taken to  
14 the best of my ability.

15 I further certify that I am not a relative or  
16 employee of an attorney or party, nor am I financially  
17 interested in the action.

18 ☒ Signature was requested.

19 ☐ Signature was waived.

20 ☐ Signature was not requested.

21 I have subscribed my name on this 3rd  
22 day of January, 2025.

23

24

25

*Brooke J. Simms*

Brooke Simms, RPR, CCR, CSR  
Idaho CSR No. 1174  
Utah CCR No. 12335391-780